

City of Fort Lauderdale

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Meeting Minutes

Tuesday, January 24, 2023

6:00 PM

**City Hall - City Commission Chambers
100 North Andrews Avenue, Fort Lauderdale, FL 33301**

City Commission Regular Meeting

FORT LAUDERDALE CITY COMMISSION

DEAN J. TRANTALIS Mayor

WARREN STURMAN Vice Mayor - Commissioner - District IV

JOHN C. HERBST Commissioner - District I

STEVEN GLASSMAN Commissioner - District II

PAM BEASLEY-PITTMAN Commissioner - District III

GREG CHAVARRIA, City Manager

DAVID R. SOLOMAN, City Clerk

D'WAYNE M. SPENCE, Interim City Attorney

PATRICK REILLY, City Auditor

CALL TO ORDER

Mayor Trantalis called the meeting to order at 6:10 p.m.

Pledge of Allegiance

Mayor Dean J. Trantalis

ROLL CALL

Present: 5 - Commissioner Steven Glassman, Commissioner Pam Beasley-Pittman, Vice Mayor Warren Sturman, Commissioner John C. Herbst and Mayor Dean J. Trantalis

QUORUM ESTABLISHED

Also Present: City Manager Greg Chavarria, City Clerk David R. Soloman, Interim City Attorney D'Wayne M. Spence, and City Auditor Patrick Reilly

AGENDA ANNOUNCEMENTS

Mayor Trantalis announced the following updates to the published Agenda:

CM-7: CAM and Exhibits 1 & 2 were revised to the correct number of hotel rooms and the associated application fee

M-6: Revisions were made to Exhibit 3, pages 4, 16, 18, 20, 22 and 25

M-8: CAM was revised to add additional language to page 1, and Exhibit 1 was revised to remove duplicated pages

PH-3: The Agenda Title should read Commission Districts 1, 2, 3 and 4

Copies of Revisions are attached to these Meeting Minutes.

Approval of MINUTES and Agenda

23-0135

Minutes for December 6, 2022, Commission Special Meeting, December 6, 2022, Commission Conference Meeting, December 6,

2022, Commission Regular Meeting - (Commission Districts 1, 2, 3 and 4)

Commissioner Herbst made a motion to approve the Meeting Minutes and Agenda and was seconded by Commissioner Glassman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PRESENTATIONS

PRES- 23-0140
1

Vice Mayor Sturman to present District IV Community Appearance Board "WOW" Award

Vice Mayor Sturman requested Frank and Barbie Barfield, and Cabot Edewaard, Chair of the Community Appearance Board, join him for the presentation of the District IV Community Appearance Board "WOW" Award ("WOW" Award).

Vice Mayor Sturman presented the District IV "WOW" Award to Frank and Barbie Barfield, recognizing their Rio Vista Neighborhood home. He expounded on improvements made to the Barfield residence. Mr. Barfield thanked Vice Mayor Sturman, Mayor Trantalis, and the Commission for this recognition.

PRESENTED

CONSENT AGENDA PUBLIC COMMENT

Mayor Trantalis explained procedures and details regarding how members of the public could speak on Consent Agenda items.

CM-6:

Mayor Trantalis recognized James LaBrie, 1514 NE 20th Street. Mr. LaBrie provided his viewpoint and remarked on concerns about the City's pilot program.

In response to Vice Mayor Sturman's question, City Manager Chavarria explained the pilot program runs for one (1) year from the date the Ordinance was adopted.

CONSENT AGENDA

Mayor Trantalis announced that no Consent Agenda items were pulled by Commission Members for separate discussion.

Approval of the Consent Agenda

Vice Mayor Sturman made a motion to approve the Consent Agenda and was seconded by Commissioner Glassman.

Approve the Consent Agenda

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CONSENT MOTION

- CM-1** 23-0040 Motion Accepting a Donation of two (2) Dell Laptops and one (1) Apple 10.2-inch iPad Wi-Fi (9th Generation) and one (1) Apple iPad mini-Wi-Fi (6th Generation) for Fort Lauderdale Fire Rescue from the Florida Department of Health, Division of Emergency Preparedness and Community Support in the amount of \$3,130.82 - (Commission Districts 1, 2, 3 and 4)
- APPROVED**
- Yea:** 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis
- CM-2** 23-0077 Motion Approving a Parking Enforcement Agreement with 1 East Broward Owner, LLC, Located at 200 NE 2nd Street - (Commission District 2)
- APPROVED**
- Yea:** 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis
- CM-3** 23-0082 Motion Approving the Designation of Vice Mayor Warren Sturman to Serve on the Broward Metropolitan Planning Organization Board - (Commission Districts 1, 2, 3 and 4)
- APPROVED**
- Yea:** 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis
- CM-4** 23-0098 Motion Approving and Authorizing the Execution of a Revocable License with KT Seabreeze Atlantic LLC for Temporary Right-of-Way Closures on Sebastian Street and Alhambra Street in Association with the Selene Development Located at 151 N Seabreeze Boulevard - (Commission District 2)
- APPROVED**

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CM-5 23-0099

Motion Approving and Authorizing the Execution of a Revocable License with PMG-Greybrook Riverfront II LLC for Temporary Right-of-Way Closure on SW 2nd Street in Association with the Society Las Olas (f/k/a X-Las Olas) Phase II Development Located at 221-300 SW 1st Avenue - (Commission District 4)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CM-6 23-0108

Motion Approving a License and an Agreement for the Sale, Service, and Consumption of Food and Alcoholic Beverages on the Public Beach for the FTLFS Hotel Property LP d/b/a Four Seasons Hotel and Residences Fort Lauderdale - (Commission District 2)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CM-7 23-0110

Motion Approving a License and an Agreement for the Sale, Service, and Consumption of Food and Alcoholic Beverages on the Public Beach for the Capri Hotel LLC d/b/a W Fort Lauderdale - (Commission District 2)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CM-8 23-0115

Motion Approving FY 2023 Beach Business Improvement District (BBID) Grant Participation Agreement with Florida Panthers Hockey Club LTD. - \$125,000 - (Commission District 2)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CM-9 23-0117

Motion Authorizing a Revocable License with the United States Government General Services Administration for Access to Build, Construct, and Operate Pump Station A-16 - (Commission District 4)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

- CM-10** 23-0145 Motion Approving Third Amendment to the Lease Agreement Between The Harbor Shops, LLC and the City of Fort Lauderdale for Property Located at 1845 Cordova Road, Suite 207, Fort Lauderdale, FL 33316 - (Commission District 4)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CONSENT RESOLUTION

- CR-1** 23-0086 Resolution Approving the Consolidated Budget Amendment to Fiscal Year 2023 - Appropriation - (Commission Districts 1, 2, 3 and 4)

ADOPTED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

- CR-2** 23-0173 Resolution Approving Fiscal Year 2023 Not for Profit Contribution Agreement with Florida Panthers Foundation, Inc. - \$50,000 - (Commission Districts 1, 2, 3 and 4)

ADOPTED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

CONSENT PURCHASE

- CP-1** 23-0005 Motion Approving an Agreement for Grant Management Software - Benevate Inc - \$134,000 - (Commission Districts 1, 2, 3 and 4)

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

MOTIONS

- M-1** 23-0111 Motion Approving Event Agreements and Related Road Closures for Great American Bash - Burger, Bourbon (Make-A-Wish), Taco and Margarita Fest and The Alpha Conference 2023 - (Commission District 2)

Commissioner Glassman noted backup information for the Great American Bash - Burger, Bourbon (Make-A-Wish), and Taco and Margarita Fest events indicated there would be a fee for these events, but the amounts were not listed.

In response to Commissioner Glassman's questions regarding event application fees for the Great American Bash - Burger, Bourbon (Make-A-Wish), and Taco and Margarita Fest events, City Manager Chavarria said the Great American Bash - Burger, Bourbon (Make-A-Wish) general admission fee is \$35 and its VIP event admission is \$150. The general admission fee for the Taco and Margarita Fest is \$15 and its VIP event admission fee is \$69.

Commissioner Glassman remarked on the need for event applications to include the cost of admission fees.

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Commissioner Beasley-Pittman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-2 23-0113

Motion Approving an Event Agreement and Request for Music Exemption for St. Jerome Catholic Church and School Fall Festival 2023 - (Commission District 4)

Mayor Trantalis recognized Evelyn Rodriguez, 2533 SW 9th Avenue, on behalf of St. Jerome Catholic Church. Ms. Rodriguez commented on correspondence from the Project Manager of a stormwater project that is scheduled to begin next week and will block the main entrance to St. Jerome's school and other areas, negatively impacting this significant fundraising event.

Mayor Trantalis recognized Alan Dodd, Public Works Department Director. Mr. Dodd explained the project is part of the River Oaks Stormwater Project, and said Staff will confer with the contractor to determine whether accommodations could be arranged to delay the Project on Thursday and Friday, the first two (2) days of the event. City Manager Chavarria remarked on incurring change order fees. Further comment and discussion ensued.

Ms. Rodriguez noted that the City had previously provided signage directing the public to this event and inquired about the ability of the City to provide. Phil Thornburg, Parks and Recreation Department Director, said the signage was portable electronic billboard and would reach out to the Police Department and determine availability.

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Vice Mayor Sturman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-3 23-0114

Motion Approving an Event Agreement and Extended Road Closure Beyond 10:00am on the Barrier Island for the Las Olas Triathlon - (Commission Districts 1 and 2)

Commissioner Glassman discussed the need for increased traffic mitigation efforts at barrier island events, particularly north of Las Olas Boulevard. He expounded on related details, including having more Police Department personnel stationed in the beach area. City Manager Chavarria confirmed.

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Commissioner Beasley-Pittman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-4 23-0112

Motion Approving an Agreement with Greater Fort Lauderdale Pride, Inc. for Pride of the Americas Parade and Festival 2023 - (Commission District 2)

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Vice Mayor Sturman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-5 23-0024

Motion Authorizing Purchase of Property Insurance - Underwriters at Lloyd's of London, et al. - \$2,981,532 - (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Commissioner Beasley-Pittman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-6 23-0026

Motion Approving an Agreement with Florida Panthers Hockey Club Enterprises, Inc. for a Three-day 2023 Truly Hard Seltzer NHL All-Star Beach Weekend Event and Music Concert on Fort Lauderdale Beach - (Commission Districts 2 and 4)

Commissioner Glassman noted this event agreement indicates an admission fees but the fee is not listed.

In response to Mayor Trantalis' question, Nicholas Gennarelli, 395 9th Avenue, New York, NY, on behalf of the National Hockey League, said the concert is a private event for corporate sponsors and friends and family of the National Hockey League. There is no charge for other event activities.

Vice Mayor Sturman made a motion to approve this Agenda item and was seconded by Commissioner Beasley-Pittman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-7 23-0094

Motion Approving a Service Agreement for the Proprietary Purchase of Bulk Waste Processing - Waste Management Inc. of Florida - \$1,405,040 - (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Vice Mayor Sturman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-8 23-0097

Motion Approving a Service Agreement for the Proprietary Purchase of Recyclable Materials Processing - Waste Management Inc. of Florida - \$11,009,152 - (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Commissioner Beasley-Pittman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

M-9 23-0148

Motion Approving Negotiated Fee Schedule and Continuing Agreements for Construction Engineering Inspection Services - Various Consultants - \$3,000,000 (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman made a motion to approve this Agenda item and was seconded by Vice Mayor Sturman.

APPROVED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

RESOLUTIONS

R-1 23-0155

Appointment of Board and Committee Members - (Commission Districts 1, 2, 3 and 4)

City Clerk David Soloman read the names of Board and Committee nominees for appointment and/or reappointment at the February 7, 2023, Commission Regular Meeting.

City Clerk Soloman read into the record the names of the Board and Committee appointments and reappointments for Agenda item R-1.

Commissioner Glassman introduced this Resolution as amended which was read by title only.

ADOPTED AS AMENDED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

R-2 23-0095

Resolution Waiving the Competitive Solicitation and Selection Processes Contained in the Procurement Ordinance and Approving an Agreement for Disposal Services for Construction and Demolition Debris with Waste Management Inc. of Florida - \$563,732 - (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman introduced this Resolution which was read by title only.

ADOPTED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

R-3 23-0146

Resolution Amending Resolution 22-88 to Remove 'Park-Like' in the SE 17th Street Causeway Bridge Use and Occupancy Agreement between the Florida Department of Transportation and the City of Fort Lauderdale - (Commission District 4)

Vice Mayor Sturman requested Agenda items R-3 and R-4 be deferred. In response to Mayor Trantalis' question regarding the reason, Vice Mayor Sturman explained District 4 residents do not want to eliminate the term "Park-Like".

Ben Rogers, Transportation and Mobility Department Director, explained his understanding. In 2002, the City entered into an agreement for the

use of this space, and the description at that time had the term "Park Like" included in that twenty-year (20) agreement, which expired in 2022. This area is under the jurisdiction of FDOT, and FDOT wishes to ensure this space is available for future transportation needs or projects.

Mayor Trantalis discussed previous community efforts, which sought to ensure a user-friendly amenity underneath the bridge benefiting pedestrians and bicyclists, and expounded on related details.

In response to Mayor Trantalis' question regarding what impact FDOT's request would have on the City if the agreement is not executed, Mr. Rogers explained his understanding that this is a clean-up item.

Vice Mayor Sturman remarked on his understanding that this concern stemmed from one (1) email and noted the need for deferment of this item to reach out to FDOT and determine whether this is a requirement.

In response to Mayor Trantalis' question, City Manager Chavarria noted that Agenda items R-3 and R-4 are not time sensitive.

Vice Mayor Sturman made a motion to defer this Agenda item until February 21, 2023, and was seconded by Commissioner Herbst.

DEFERRED to February 21, 2023

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

R-4 23-0147

Resolution Amending Resolution 22-89 to Remove 'Park-Like' in the Riverland Woods Park Use and Occupancy Agreement between the Florida Department of Transportation and the City of Fort Lauderdale - (Commission District 4)

Vice Mayor Sturman made a motion to defer this Agenda item until February 21, 2023, and was seconded by Commissioner Glassman.

DEFERRED to February 21, 2023

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

R-5 23-0046

Resolution Approving an Interlocal Agreement between the City of Fort Lauderdale and the Fort Lauderdale Downtown Development Authority for Reimagining Huizenga Plaza - \$714,285.71 in Fiscal Year 2023 (\$5,800,000, eight-year total) - (Commission District 4)

Mayor Trantalis recognized Jenni Morejon, President and Chief Executive Officer, Fort Lauderdale Downtown Development Authority (DDA). Ms. Morejon narrated a presentation entitled *Huizenga Park*

(Park) Reimagined.

A copy of the presentation is part of the backup to this Agenda item.

Mayor Trantalis recognized Debbie Scott-Queenin, 333 Las Olas Way. Ms. Scott-Queenin spoke in opposition to this Agenda item.

In response to Mayor Trantalis' question, Ms. Scott-Queenin explained that some residents, commercial vehicles, and the trash service use SE 1st Avenue to access the Las Olas River House Condominium. Further comment and discussion ensued.

Mayor Trantalis recognized Michelle D'Avolio, 100 East Las Olas Boulevard. Ms. D'Avolio spoke in support of this Agenda item.

Mayor Trantalis recognized Steve Hudson, 1799 SE 9th Street, DDA Board Member. Mr. Hudson spoke in support of this Agenda item.

In response to Mayor Trantalis' question, Mr. Hudson confirmed the agreement with the restaurant operator would expressly state there can be no outside music or entertainment at any outdoor eating areas. Mayor Trantalis remarked on the need for the restaurant to be respectful of area neighbors related to plans for low-level decibel ambient music in the outside dining area. Further comment and discussion ensued.

In response to Commissioner Herbst's question, Mr. Hudson said there would not be rooftop activities with amplified music.

Mayor Trantalis recognized Denise Pont, 100 East Las Olas Boulevard. Ms. Pont spoke in support of this Agenda item.

Mayor Trantalis recognized Kurt Zimmerman, 1801 SE 7th Street. Mr. Zimmerman spoke in support of this Agenda item.

Mayor Trantalis recognized John Milledge, Esq., 200 SW 1st Avenue, and on behalf of the DDA. Mr. Milledge spoke in support of this Agenda item and discussed related details.

Mayor Trantalis recognized Charlie Ladd, 442 NE 7th Avenue, DDA Board Member. Mr. Ladd spoke in support of this Agenda item.

Mayor Trantalis recognized Dev Motwani, 2415 Delmar Place, DDA Board Member. Mr. Motwani spoke in support of this Agenda item.

Mayor Trantalis recognized William Barrett, 333 Las Olas Way. Mr. Barrett discussed his viewpoint regarding this Agenda item.

Mayor Trantalis recognized Melinda Bowker, 511 SE 5th Street, Downtown Fort Lauderdale Civic Association President. Ms. Bowker spoke in support of this Agenda item and read from a prepared statement endorsing this Agenda item with stipulations.

Mayor Trantalis confirmed Ms. Bowker's remarks had merit and would be discussed by Commission Members following public comment.

Mayor Trantalis recognized Deborah Steiner, 511 SE 5th Avenue. Ms. Steiner spoke in support of this Agenda item.

Mayor Trantalis recognized Alan Hooper, 2719 NE 37th Drive, DDA Chair. Mr. Hooper spoke in support of this Agenda item.

In response to Mayor Trantalis' question regarding City funding for the Project, City Manager Chavarria read from the proposed agreement confirming that City funding would not exceed one-third (1/3) of overall project costs and would not go towards restaurant funding.

Mayor Trantalis recognized Brian Donaldson, 3321 NE 16th Street, Budget Advisory Board (BAB) Chair. Mr. Donaldson spoke in support of this Agenda item and commented on the BAB's input in support of the City's portion of project funding.

In response to Vice Mayor Sturman's question regarding who would be the lessor following the sunseting of the DDA, Mr. Milledge said the City would be the lessor.

Mayor Trantalis thanked Chair Donaldson and the members of the BAB for their efforts to develop the City's funding scenario of one-third (1/3) of the costs for the total project and that none of this funding would fund the planned restaurant. Further comment and discussion ensued.

Mayor Trantalis recognized Jim Ellis, 3020 NE 32nd Avenue. Mr. Ellis spoke in support of this Agenda item.

Mayor Trantalis recognized Jeffrey Chircus, 333 Las Olas Way, President of the River House Condominium Association. Mr. Chircus spoke in opposition to the planned restaurant associated with this project.

In response to Mayor Trantalis' question regarding the City committing

space for parking, City Manager Chavarria said this would be determined at the time of application and commented on related details. Mayor Trantalis remarked on the importance of considering various factors related to committing City parking areas for the proposed restaurant that may impact future downtown development plans. Ms. Morejon remarked on the need for a final site plan to go through the DRC process. The restaurant operator wants to ensure a successful operation and experience for all stakeholders and expounded on related details.

Mayor Trantalis reiterated he was not in favor of any parking arrangement that commits the City in perpetuity to allow the restaurant's use of the City parking garage, which would prevent the City from redeveloping that site.

In response to Commissioner Herbst's question regarding current zoning, Ms. Morejon said the zoning is Regional Activity Center City Center (RACC) and explained related details. Commissioner Herbst noted that another building similar to 100 East Las Olas could be constructed on this site. Ms. Morejon explained aspects of the adjacent public rights-of-way and said ingress and egress from the property would be from area side streets.

Mayor Trantalis recognized Bo Laterveer, 333 Las Olas Way. Mr. Laterveer spoke in opposition to this Agenda item.

Mayor Trantalis recognized Camelia Craciun, 419 SE 2nd Street. Ms. Craciun spoke in support of this Agenda item.

Mayor Trantalis recognized Ron Castille, 411 N. New River Drive East. Mr. Castille provided his input on this Agenda item.

Mayor Trantalis recognized Debi Levy, 333 Las Olas Way. Ms. Levy spoke in opposition to this Agenda item. Ms. Levy submitted documents related to this Agenda item. Mayor Trantalis requested a copy be given to City Clerk David Soloman for distribution to Commission Members.

A copy has been made part of the backup to this Agenda item.

In response to Vice Mayor Sturman's questions, Mr. Milledge explained the City pays the DDA \$100,000 annually in rent, and the City maintains the Park. When this Agenda item moves forward, the City will continue to pay \$100,000 annually dedicated to Park maintenance.

Mayor Trantalis recognized Stan Eichelbaum, 411 N. New River Drive East. Mr. Eichelbaum spoke in opposition to this Agenda item. Further comment and discussion ensued.

Mayor Trantalis recognized Jim McGrath, 411 N. New River Drive. Mr. McGrath spoke in opposition to this Agenda item.

Mayor Trantalis recognized Marc Launer, 333 Las Olas Way. Mr. Launer spoke in opposition to this Agenda item.

Mayor Trantalis recognized Ray McElroy, 1808 SW 11th Street. Mr. McElroy spoke in opposition to this Agenda item.

Mayor Trantalis recognized Steven Rifkin, 347 N. New River Drive East. Mr. Rifkin discussed his viewpoint on this Agenda item.

Mayor Trantalis recognized Greg Brewton, 633 SE 3rd Avenue, and DDA Board Vice Chair. Mr. Brewton spoke in support of this Agenda item.

In response to Commissioner Glassman's question, Mr. Brewton confirmed this project will go through the Development Review Committee (DRC) process and expounded on related details.

Commissioner Glassman clarified that this Agenda item does not pertain to a site plan. It pertains to the City's first payment, and amendments to the lease and the Interlocal Agreement between the City and the DDA. Commissioner Glassman expounded on his viewpoint and noted the public would have the opportunity to participate as the project site plan moves through the DRC process. Further comment and discussion ensued.

There being no one else wishing to speak on this item, Vice Mayor Sturman made a motion to close the public hearing, and was seconded by Commissioner Glassman. Roll call showed: AYES: Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst, and Mayor Trantalis

Vice Mayor Sturman discussed his viewpoint and commented on concerns, including keeping the Park as park space in perpetuity, noise, traffic, and impact on the Riverwalk and the marine community.

In response to Vice Mayor Sturman's questions regarding concerns expressed by the community, Mr. Milledge confirmed that no City funding would go towards the restaurant, and the DDA owns the land. Further comment and discussion ensued.

Vice Mayor Sturman remarked on the project's benefits to the City,

including benefiting from \$15,000,000 in renovations and details related to guaranteeing the Park will remain a park in perpetuity. He reiterated that none of the City's funding would go to the restaurant.

Vice Mayor Sturman recommended the following stipulations be included in the City's Interlocal Agreement with the DDA: 1) there would be a deed restriction that the Park would remain a park in perpetuity; 2) rezoning of this area as a park; 3) performing a traffic study; 4) no outside noise after 10:00 p.m. on weekdays and 11:00 p.m. on weekends; 5) the project be limited to Bubier Park.

Ms. Morejon said the lease would not allow outdoor live amplified music or a deejay, and any outdoor seating music would be ambient.

Mr. Milledge confirmed the DDA will work with Riverwalk, and should an agreement not be reached, the DDA would return to the Commission.

Commissioner Herbst concurred with issues discussed by Vice Mayor Sturman. Commissioner Herbst discussed numerous successful restaurants in parks around the country and said this site is located in a unique environment providing residents, office workers, and students an opportunity to enjoy greenspace and a restaurant. Commissioner Herbst concurred on the restriction of amplified music and the willingness of the DDA to include the restrictive covenant in the Interlocal Agreement. He remarked that all streets are intended to be shared, and through the DRC process, those utilizing SE 1st Avenue will do so in a way that is compatible with everyone. Commissioner Herbst confirmed his support and emphasized the need to memorialize all stipulations in the Interlocal Agreement.

Commissioner Beasley-Pittman concurred with Commissioner Herbst's comments and the need to adhere to the process. Commissioner Beasley-Pittman agreed with Vice Mayor Sturman regarding conditions that should be included in the Interlocal Agreement to ensure the project is successful and commented on the opportunity this project would bring to the City.

Commissioner Glassman concurred with the previous concerns discussed and the recommendations discussed by Commission Members. He noted the crucial aspect of ensuring the Park remains a park in perpetuity and confirmed his support of moving forward with this Agenda item.

Interim City Attorney D'Wayne Spence requested clarification regarding the Interlocal Agreement included with this Agenda item with regard to

incorporating Vice Mayor Sturman's conditions. He noted this would require renegotiation of the Interlocal Agreement with the DDA and returning to the Commission for approval. Further comment and discussion ensued.

Mr. Milledge suggested going through each stipulation again. DDA Board Members are present and could voice a concern if necessary.

Vice Mayor Sturman discussed the six (6) stipulations to be incorporated in the Interlocal Agreement:

1. Including a deed restriction.

Mr. Milledge confirmed.

2. Rezone as a park.

Mr. Milledge confirmed the DDA will work with City Staff in good faith to rezone the Park after the project is constructed.

3. City funding excludes any funding associated with the restaurant.

Mr. Milledge confirmed this is contained in the Interlocal Agreement.

4. Performing a traffic study.

Mr. Milledge confirmed.

5. No outside noise from the restaurant after 10:00 p.m. on weekdays and 11:00 p.m. on weekends.

Mr. Milledge confirmed.

6. The project will not infringe on the Riverwalk, limiting the project property line to Bubier Park.

Mr. Milledge confirmed the DDA's desire to meet with Riverwalk. The DDA will return to the Commission if an agreement cannot be reached. Further comment and discussion ensued.

Commissioner Glassman remarked on Commission discussions prior to new Commissioners taking office regarding their request that the DDA

works with Riverwalk. He explained his viewpoint opposing being absolute concerning a specific boundary, the need to look at things holistically, and recommended a review of the site plan.

Vice Mayor Sturman discussed his concern regarding impeding the Riverwalk pathway. Further comment and discussion ensued. Vice Mayor Sturman noted the need for the DDA and the Riverwalk to work together.

In response to Mayor Trantalis' question, Interim City Attorney Spence explained that the introduction of this Resolution would adopt the Interlocal Agreement with the provision that the six (6) conditions listed on the record would be incorporated into the Interlocal Agreement.

Vice Mayor Sturman introduced this Resolution adopting the Interlocal Agreement with the provision that the six (6) conditions of approval discussed on the record are incorporated into the Interlocal Agreement. The Resolution was read by title only.

ADOPTED

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PUBLIC HEARINGS

PH-1 23-0004

Public Hearing - Resolution (a) Approving an Application for a Dock Permit for Usage of Public Property by Rick J Burgess adjacent to 711 Cordova Road for (i) a 50' +/- long X 8' +/- wide marginal dock and appurtenant steps and (ii) a 14' +/- X 10' +/- four (4) post boatlift and (b) Authorizing Execution of a Declaration of Restrictive Covenants - (Commission District 4)

Interim City Attorney Spence noted a scrivener's error. The name of the applicant listed in this Resolution should be Rick, not Richard.

Vice Mayor Sturman introduced this Resolution for approval which was read by title only.

ADOPTED - Approving

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PH-2 23-0006

Public Hearing - Resolution (a) Approving an Application for a Dock Permit for Usage of Public Property by William Premock and Vivian Alvarez located at 1410 SE 11 Street and (b) Authorizing Execution of a Declaration of Restrictive Covenants - (Commission District 4)

Vice Mayor Sturman introduced this Resolution for approval which was read by title only.

ADOPTED - Approving

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PH-3 23-0071

Public Hearing - Ordinance Amending the City of Fort Lauderdale Comprehensive Plan Future Land Use Element to Update the Mixed-Use Land Use Designation and Floor Area Ratio - UDP-L22004 - (Commission District 1)

Mayor Trantalis opened the public hearing.

There being no one wishing to speak on this item, Commissioner Herbst made a motion to close the public hearing and was seconded by Commissioner Glassman. Roll call showed: AYES: Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst, and Mayor Trantalis

In response to Vice Mayor Sturman's question, Nectaria Chakas, Esq., Lochrie and Chakas, P.A., on behalf of the applicant, explained the ten percent (10%) commercial provision was eliminated from mixed-use development regulations because it was a detailed provision that belongs in the City's land development regulations and expounded on related details. Further comment and discussion ensued.

Commissioner Glassman introduced this Ordinance for the First Reading which was read by title only.

PASSED FIRST READING

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PH-4 23-0072

Public Hearing - Ordinance Amending City of Fort Lauderdale Comprehensive Plan Future Land Use Map Designation from Medium-High Residential (25) to Mixed Use for 200 and 400 Corporate Drive - UDP- L22003 - (Commission District 1)

Mayor Trantalis opened the public hearing.

There being no one wishing to speak on this item, Commissioner Herbst made a motion to close the public hearing and was seconded by Commissioner Glassman. Roll call showed: AYES: Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst, and Mayor Trantalis

Commissioner Herbst introduced this Ordinance for the First Reading which was read by title only.

PASSED FIRST READING

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PH-5 23-0007

Public Hearing - Quasi-Judicial Resolution Granting a Waiver of Limitations at 1645 East Lake Drive, for the installation of one (1) boat lift extending a maximum of 30' +/- - (Commission District 4)

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Each Commission Member disclosed verbal communications, written communications, site visits and expert opinions received.

Mayor Trantalis opened the public hearing.

There being no one wishing to speak on this item, Commissioner Herbst made a motion to close the public hearing and was seconded by Commissioner Glassman. Roll call showed: AYES: Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst, and Mayor Trantalis

In response to Mayor Trantalis' questions regarding the location of this dock, Kyle Martinez, on behalf of American Seawall - Latham Residences, explained this property is located on both the lake and canal area. The dock will protrude into Lake Sylvia, not into the canal.

Commissioner Herbst introduced this Resolution for approval which was read by title only.

ADOPTED - Approving

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

PH-6 23-0018

Public Hearing - Quasi-Judicial Ordinance Approving a Rezoning from Residential Multifamily Mid Rise - Medium High Density (RMM-25) District to Northwest Regional Activity Center-Mixed-Use East (NWRAC-MUe) District - 628 NW 3rd Avenue; East of NW 3rd Avenue, West of NW 2nd Avenue, South of NW 7th Street and North of 610 NW 3rd Avenue - Water Tower Apartments, LLC. - Case No. UDP-Z22016 - (Commission District 2)

Anyone wishing to speak must be sworn in. Commission will announce any site visits, communications or expert opinions received and make them part of the record.

Each Commission Member disclosed verbal communications, written communications, site visits and expert opinions received.

Mayor Trantalis opened the public hearing.

There being no one wishing to speak on this item, Commissioner Herbst made a motion to close the public hearing and was seconded by Commissioner Glassman. Roll call showed: AYES: Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst, and Mayor Trantalis

Commissioner Glassman introduced this Ordinance for the First Reading which was read by title only.

PASSED FIRST READING

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

ORDINANCE FIRST READING

OFR-1 23-0027

First Reading - Ordinance - Amending Unified Land Development Regulations (ULDR), Sections 47-19.3 Boat slips, docks, boat davits, hoists and similar mooring structures and 47-39 Development Regulations for Annexed Areas and Adding Section 47-19.13 Resiliency Standards for Tidal Flood Protection - (Commission Districts 1, 2, 3 and 4)

Commissioner Herbst remarked on discussions with Dr. Nancy Gassman, Assistant Public Works Director - Sustainability, regarding the need for Staff to conduct community outreach regarding this Agenda item to District 1 residents with aging seawalls. He discussed costs associated with this Ordinance to be in compliance with Broward County's new standards for seawall height when a seawall has deteriorated and requires replacement.

Commissioner Beasley-Pittman requested Staff include similar community outreach efforts to District 3 residents.

Commissioner Herbst introduced this Ordinance for the First Reading which was read by title only.

PASSED FIRST READING

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

OFR-2 23-0161

First Reading - Ordinance Ratifying and Approving the Transfer of the Lauderdale Isle Water Management District into the City of Fort Lauderdale and Providing for the Modification of the District's Charter and Boundary - (Commission District 4) - Requesting Deferment to February 7, 2023.

Commissioner Glassman made a motion to defer this Agenda item to February 7, 2023, and was seconded by Commissioner Beasley-Pittman.

DEFERRED to February 7, 2023

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

ORDINANCE SECOND READING

OSR-1 23-0132

Second Reading - Ordinance Amending the Non-Bargaining-Unit Classification Table of the Pay Plan of the City of Fort Lauderdale, Florida, by Creating One New Classification - (Commission Districts 1, 2, 3 and 4)

Commissioner Glassman introduced this Ordinance for the Second Reading which was read by title only.

ADOPTED ON SECOND READING

Yea: 5 - Commissioner Glassman, Commissioner Beasley-Pittman, Vice Mayor Sturman, Commissioner Herbst and Mayor Trantalis

DISCUSSION

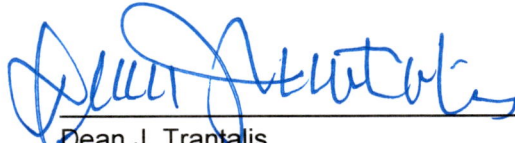
City Clerk David Soloman explained that the City's seat on the Central Wastewater Region Large Users Advisory Board (Advisory Board), previously held by former District 1 Commissioner Heather Moraitis, is vacant. There is an upcoming meeting on this Advisory Board on February 8, 2023. Further comment and discussion ensued.

Mayor Trantalis requested Commission Members consider serving on this Advisory Board.

City Clerk David Soloman noted that the City's Risk Advisory Board has a vacant Commission Member position that was previously held by Commissioner Ben Sorensen.


ADJOURNMENT

Mayor Trantalis adjourned the meeting at 9:25 p.m.



Dean J. Trantalis
Mayor

ATTEST:



David R. Soloman
City Clerk



**CITY OF FORT LAUDERDALE
City Commission Agenda Memo
REGULAR MEETING**

#23-0110

TO: Honorable Mayor & Members of the
Fort Lauderdale City Commission

FROM: Greg Chavarria, City Manager

DATE: January 24, 2023

TITLE: **REVISED CM-7** - Motion Approving a License and an Agreement for the
Sale, Service, and Consumption of Food and Alcoholic Beverages on the
Public Beach for the Capri Hotel LLC d/b/a W Fort Lauderdale -
(Commission District 2)

Recommendation

Staff recommends the City Commission approve a motion to issue a license to allow for the sale, service, and consumption of food and alcoholic beverages on the public beach directly in front on the W Fort Lauderdale, located at 401 N Fort Lauderdale Beach Blvd.

Background

On November 1, 2022, the City Commission adopted an ordinance (2nd reading) authorizing a one-year pilot program to allow for the Sale, Service, and Consumption of Food and Alcoholic Beverages on the public beach directly in front of the hotels facing A1A.

Pursuant to Section 8-55.4, of the Code of Ordinances of the City of Fort Lauderdale, the Hilton Fort Lauderdale Beach Resort has submitted the license application for the sale, service and delivery of food and alcoholic beverages on city beaches by upland hotels. The application fee for the sale, service, and delivery of food and alcoholic beverages on city beaches are calculated at an amount equal to \$25.00 times the number of guest rooms at the Applicants upland hotel and shall be due annually on January 1st of each year. The W Fort Lauderdale currently has ~~547~~ **519** Rooms. Per the Ordinance, the application fee is ~~\$42,925~~ **12,975**.

Resource Impact

Revenue related to this agreement will be included in the FY 2023 operating budget in the account listed below:

Revenue as of January 12, 2022					
ACCOUNT NUMBER	COST CENTER NAME (Program)	ACCOUNT/ACTIVITY NAME	AMENDED BUDGET	AMOUNT RECEIVED	AMOUNT
10-001-6001-572-329-501	Parks & Rec Administrative Support	Beach Food and Beverage Service Permit	\$249,000	\$26,961	\$12,925 <u>\$12,975</u>
				TOTAL AMOUNT ►	\$12,925 <u>\$12,975</u>

Strategic Connections

This item is a 2022 Commission Priority, advancing the Public Places initiative.

This item supports the *Press Play Fort Lauderdale 2024* Strategic Plan, specifically advancing:

- The Public Places Focus Area
- Goal 3: Build a healthy and engaging community
- Objective: Improve access to and enjoyment of our beach, waterways, parks, and open spaces for everyone

This item advances the *Fast Forward Fort Lauderdale 2035* Vision Plan: We Are Here

This item supports the *Advance Fort Lauderdale 2040* Comprehensive Plan specifically advancing:

- The Public Places Focus Area
- The Parks, Recreation & Open Space Element
- Goal 6: Be a community with high quality parks and recreational facilities that highlight the character of our City.

Attachments

Exhibit 1 – Application Package

Exhibit 2 – License Agreement

Prepared by: Carolyn Bean, Parks and Recreation

Department Director: Phil Thornburg, Parks and Recreation

**CITY OF FORT LAUDERDALE
TEMPORARY LICENSE AGREEMENT
FOR THE SALE, SERVICE AND DELIVERY
OF FOOD AND ALCOHOLIC BEVERAGES ON CITY BEACHES**

THIS LICENSE AGREEMENT, is entered into on _____, 2023, by
and between:

THE CITY OF FORT LAUDERDALE, a Florida municipal
corporation, hereinafter referred to as “**City**”

and

CAPRI HOTEL, LLC, a Delaware Limited Liability Company
authorized to transact business in the State of Florida, with its
principal address at 30 Hudson Yards, 72nd Floor, New York, NY
10001, hereinafter referred to as “**Applicant**” or “**Licensee**.”

[collectively referred to as “**Parties**.”]

WHEREAS, Applicant is the owner or operator of the **W FORT LAUDERDALE**, an
upland hotel located at **401 North Fort Lauderdale Beach Boulevard., Fort Lauderdale,
Florida, 33304**, and desires to sell, serve, and deliver food and alcoholic beverages on the City
beaches for consumption by its hotel guests or any person occupying a beach chair rented from
a City-approved beach concessionaire; and

WHEREAS, on November 1, 2022, the City Commission adopted Section 8-55.4 of the
Code of Ordinances of the City of Fort Lauderdale, Florida (“City Code”) authorizing a one-year
pilot program to allow the sale, service, and consumption of food and alcoholic beverages on the
public beach by upland hotels located along State Road A-1-A, upon the approval of a license
application and license agreement by the City Commission and subject to certain terms and
conditions outlined therein; and

WHEREAS, Section 8-55.4 of the City Code shall automatically be repealed, null and
void and of no further force and effect, unless re-enacted by the city commission on or before
three hundred sixty-five (365) days from the date of its passage, and any license or license
agreement approved by the city commission will automatically terminate and all rights and
privileges granted thereunder shall be null and void and of no further force and effect; and

WHEREAS, the City is in receipt of a completed license application by Applicant with
all applicable license fees and supporting documents in compliance with the terms and conditions
outlined in Section 8-55.4 of the City Code (“License Application”); and

WHEREAS, Applicant wish to enter into a temporary license agreement with the City to
memorialize the terms and conditions outlined in City Code Section 8-55.4; and

WHEREAS, the City Commission has determined allowing the sale, service and consumption of food and non-alcoholic beverages to tourists and visitors on the sandy area of the beach will improve tourists' and visitors' experience on Fort Lauderdale beach; and

WHEREAS, City Commission wish to approve Applicant's license application and enter into this Temporary License Agreement with Applicant, subject to the terms and conditions outlined herein ("Temporary License Agreement"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. All attached and referenced Exhibits are also incorporated herein.

2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:

- a. "Temporary License Agreement" means this Agreement between the City and Applicant, including all of the attached and referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
- b. "License Application" means a completed license application prepared by Applicant and received by City, with all applicable fees, for the sale, service, and delivery of food and alcoholic beverages on City beaches in compliance with the terms and conditions outlined in Section 8-55.4 of the City Code.
- c. "Applicant" means **CAPRI HOTEL, LLC**, a Delaware Limited Liability Company authorized to transact business in the State of Florida, and the owner or operator of an upland hotel named **W FORT LAUDERDALE**, located at **401 North Fort Lauderdale Beach Boulevard, Fort Lauderdale, Florida, 33304**.
- d. "City" means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
- e. "Contract Administrators" means the City of Fort Lauderdale's City Manager for the City or his/her designee. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. Except as provided for in this Agreement, the Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City Commission and Applicant.
- f. "City Manager" means the City of Fort Lauderdale's City Manager or his/her designee.

- g. "Hotel" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than thirty (30) days or one (1) calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests containing sleeping room accommodations for twenty-five (25) or more guests and providing the services generally provided by a hotel and recognized as a hotel in the community in which it is situated or by the hotel industry.
- h. "Upland Hotel" means any hotel located on a parcel of property that shares a property line with the western right-of-way line of a segment of State Road A-1-A, between Holiday Drive to the south and Sunrise Boulevard to the north, excluding that portion of A-1-A designated as Seabreeze Boulevard from Seville Street to the north and SE 5th Street to the south.
- i. "Sale, Service or Delivery" includes the act or action of supplying or offering for sale any food or beverage item to any person.
- j. "Alcoholic Beverages" includes beers, wines, liquors, and any type of beverage with any volume of alcohol content.
- k. "Public Beach" is defined in Sections 8-51 and 8-71 of the City Code.
- l. "Licensed Area" is defined as that portion of the Public Beach that Applicant is permitted to use during the term of this Agreement, as further defined in the License approved by the City.
- m. "Operational Plan" shall have the meaning given to such term in Section 6 of this Agreement.
- n. "Public Safety Plan" shall have the meaning given to such term in Section 7 of this Agreement.
- o. "Repair" shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Licensed Area, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties, including guests, licensees or invitees of the Applicant. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or its guests, agents, employees, contractors or subcontractors.
- p. "Term" shall have the meaning given to such term in Section 4.

3. **TEMPORARY LICENSE: PERMITTED USE.** The Applicant's license application for the sale, service and delivery of food and alcoholic beverages on the City beaches for consumption by its hotel guests or any person occupying a beach chair rented from a City-approved beach

concessionaire is hereby approved, subject to such additional terms and conditions outlined in this Agreement. Applicant is hereby authorized and entitled to use the portions of the beach owned by the City during the license period, pursuant to the terms and conditions outlined in this Agreement. The right to use the City beach area does not infer any proprietary rights onto Applicant or imply that the Applicant is automatically allowed to use any portion(s) of the beach that is not owned by the City. City makes no warranties as to any apparent or actual property lines. It is Applicant's sole responsibility to secure any and all necessary property survey. No other City properties may also be used Applicant and/or its guests, agents, employees, contractors or subcontractors, during the term of this Agreement. All food and/or alcohol sales during on the City beaches shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

4. **TERM.** The Term of this Agreement **shall commence upon execution of this Agreement and shall expire on December 31, 2023**, subject to Applicant's compliance with all terms and obligations described herein.

5. **TEMPORARY LICENSE GENERAL TERMS.**

- a. The sale, service, delivery and consumption of all food or alcoholic beverages on the Public Beach pursuant to this section shall be limited to the area within each hotel's upland property boundary lines that extend to the Public Beach, and subject to the terms and conditions outlined in the license agreement approved by the city commission;
- b. No licensee's service operation or temporary beachfront structure as defined in the City Code, if any, shall interfere with or obstruct the view of any lifeguard tower or any lifeguard on duty and, upon request by a lifeguard on duty or city official, the licensee shall immediately remove said obstruction;
- c. Beachfront storage of any equipment is prohibited;
- d. No motorized vehicles shall be used in the service or delivery of food or beverages;
- e. **The Applicant agrees to pay the City a license application fee of ~~ELEVEN THOUSAND FOUR HUNDRED SEVENTY-FIVE DOLLARS AND ZERO CENTS (\$11,475.00)~~ TWELVE THOUSAND NINE HUNDRED SEVENTY FIVE DOLLARS AND ZERO CENTS (\$12,975.00)**, which is calculated at an amount equal to Twenty-Five Dollars (\$25) times the total number of guest rooms at the Applicant upland hotel and, thereafter, a license application and applicable fee shall be due annually on January first of each year, and as may be amended from time to time by the City Commission. **The W Fort Lauderdale hotel currently has 459 519 guest rooms;** and
- f. Any other provision, term, plan or condition deemed necessary by the city, as outlined in this Agreement.

6. **OPERATIONAL PLAN.** Applicant shall provide the City with an Operational Plan

which shall include the following:

- a. A site plan, depicting a layout of the upland hotel's property boundary lines and lines representing the extension of side boundary lines east into the Public Beach representing the proposed location for food and any beverage service on the Public Beach, a detailed description and design of a temporary beachfront structure, if any, including the material to be used for the structure. Any temporary beachfront structure plans shall satisfy all applicable permitting requirements of the City Code and shall be reviewed and processed by the city's development services department;
- b. Types of food and/or beverages to be served, sold or delivered;
- c. A traffic control plan with safety guidelines for service providers and hotel guests expected to cross State Road A-1-A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A-1-A. The traffic control plan and personnel necessary to implement said plan shall be furnished at the sole cost and expense of each licensee;
- d. A policy to ensure hotel guests consuming alcoholic beverages and all employees serving or otherwise handling alcoholic beverages are 21 years of age or older;
- e. A policy to ensure service providers wear uniforms and name tags that identify the upland hotel as the employer, as more specifically set forth in the license application;
- f. Use of a mobile point-of-sale (POS) system that is compatible with other credit card processing software and necessary electronic equipment to facilitate and manage the food and beverage sale transactions to hotel guests on the beach and any person who rents a beach chair from a city-approved beach concessionaire;
- g. Statement of commitment to the exclusive use of recyclable or reusable food and beverage containers, cutlery, and condiment packaging, that all clearly identify the upland hotel as the service provider;
- h. Statement indicating that the applicant's hours of operation on the Public Beach shall be limited to seven (7) days per week, between the hours of 10:00 a.m. through 6:00 p.m. for the months of October, November, December, January, February, March, April and May, and between the hours of 10:00 a.m. through 7:00 p.m. for the months of June, July, August, and September. Any change or deviation to these operating hours requires prior city commission approval;
- i. A plan for the continuous cleanup and deposit of all trash and debris in proper receptacles in compliance with sanitary facilities and any safety inspection requirements, as deemed necessary by the City's Fire Department, Parks and Recreation department, and Development Services Department; and
- j. Statement of compliance with all applicable federal, state and local laws.

7. **TRAFFIC CONTROL PLAN.** In addition to the Applicant's traffic control plan with safety guidelines for service providers and hotel guests expected to cross State Road A-1-A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A-1-A, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors including, but not limited to, the planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS).

8. **MAINTENANCE OF LICENSED AREA.**

- a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities which shall be of the type and in sufficient number as to meet the requirements established by the Development Services Department. Applicant shall provide daily service of the facilities at all times during the License Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Cost and Expenses.
- b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Licensed area. All trash shall be collected and removed throughout each day with final cleanup being completed at the end of each day of the License period. The requirement to remove trash and debris includes street sweeping. Applicant will cover and reimburse City for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Licensed area.
- c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

9. **CONSTRUCTION OF FACILITIES, TEMPORARY STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS.**

- a. Applicant shall not erect any temporary structures, canopies, tents, concession stands, or any other permanent or temporary facilities or structures on the City beaches without first securing written approval from the City's Development Services Department.
- b. Applicant shall comply with the following:
 1. Applicant shall file with the City's Development Services Department a

detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate at the Licensed area. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such temporary structures, concessions, tents or canopies at the Licensed area. Any and all third party vendors with which Applicant contracts for the sale or distribution of alcohol shall submit a copy of the vendor's liquor liability license at this time. Sponsors of events at which food or beverages will be sold or distributed shall meet all applicable state, county and city health codes. This shall be evidenced by a license and any required permit by the appropriate authorities.

2. Current flameproof certificates must be provided for all canvas tents, awnings or canopies and shall be submitted for approval to the City's Fire Department. Applicant shall obtain approval by the City Fire Department and file with its license application evidence that such temporary structure, canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Development Services Department must review and approve the proposed use of any temporary structure used in association with the Licensed in accordance with the standard criteria as outlined in the City's Code of Ordinances and the Florida Building Code.
3. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Development Services Department. If electricity is required, Applicant shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City prior to the start date of Applicant's operation on the City beach. The City's Development Services Department shall conduct electrical inspections of all electrical facilities whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections of all electrical facilities.
4. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

10. **INSPECTION OF LICENSED AREA AND PAYMENT FOR DAMAGE TO CITY PROPERTY.**

- a. City reserves the rights to conduct random and periodic inspections of the Licensed Area to assess the condition of the premises and damage to the City property, if any. It shall be the sole responsibility of the Applicant to maintain the Licensed Area during the term of this Agreement in the same or better condition as prior to the permitted use.

- b. Applicant agrees to repair all core drilling holes and all other paved and unpaved surfaces, made to facilitate the erection of temporary structures, barriers, stages, fences, tents and other improvements to the Licensed area, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after City issues a notice or request for repair to Applicant.
- c. Applicant shall be responsible for damage to any and all portions of the licensed area including, but not limited to, all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Licensed area. Applicant shall be responsible for the costs to repair any part of the Licensed area that are damaged during the term of the License period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, guests, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', guests', and agents' personal property, except for repairs of such property caused by the negligence or willful misconduct of the City or its officers, employees or agents.
- d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, guests, or attendees negligence during the License period, City shall furnish Applicant with a written report of such damage which shall include an estimate of the cost to remedy such damage. If City arranges for such damages to be repaired by a third party, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

11. **SECURITY OF APPLICANT'S PROPERTY.** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility or liability, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused by the wrongful or negligent acts of the City or its officers, employees or agents.

12. **APPLICANT'S CONTRACTS.** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for Applicant's employees and vendors. City shall not be named as a party in any contract for the Licensed area and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with the Licensed Area. No employment relationship exists between City and Applicant.

13. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS.** Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations and/or rights under this Agreement, in whole or in part, to any person, business or entity. Any such action by Applicant will result in immediate termination of this Agreement by City and any permission or rights granted thereunder.

14. LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS.

Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Licensed area. City acknowledges and agrees that Applicant may contract with third party vendor(s) to obtain any applicable permits and licenses as may be required for the service, sale and/or distribution of food and alcoholic beverages. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City ten (10) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar. City shall have no responsibilities to any performing rights licensing organizations for any performance during the term of this Agreement.

15. STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES.

Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its guests, agents, employees and visitors to the Licensed Area.

16. INSURANCE. As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Applicant, at the Applicant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$2,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$2,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors which shall include coverage for pyrotechnics.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Liquor Liability

If Applicant engages in the sale and/or distribution of alcohol, Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

If Applicant contracts with a third-party vendor for the sale and/or distribution of alcohol, Applicant agrees to cause any and all third-party vendors to obtain, pay for and keep in force continuously during the term of this Agreement, liquor liability insurance in an amount not less than One Million Dollars (\$1,000,000.00). Applicant is required to confirm, in writing, that each vendor of the Applicant carries insurance coverages and limits that meet or exceed the conditions set forth in this Agreement.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Watercraft Liability – Not applicable.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida

Statute.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all applicable liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Applicant's name, term of this Agreement, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the

operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

If the Applicant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Applicant's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Applicant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Applicant.

17. INDEMNIFICATION AND HOLD HARMLESS. Except in cases of City, its agents, officers, and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Licensed Area or caused by, in connection with, arising out of, or resulting from any act by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If called upon by City, Applicant shall defend not only itself, but also City in connection with any such Claim at Applicant's expense, and at no expense whatsoever to City. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any Claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the term of this Agreement (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's

negligence as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination of this Agreement.

18. LIMITATION OF LIABILITY.

- a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$25,000.00. Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$25,000.00. This Section shall survive any cancellation or early termination of this Agreement.
- b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of \$25,000.00, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes, as amended. This Section shall survive any cancellation or early termination of this Agreement.

19. COSTS AND EXPENSES FOR CITY SERVICES.

Applicant agrees to cover all out of pocket costs and expenses incurred by the City for services provided at the License Area, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and repair or replacement of property, and staff time. The Police Department may require the Applicant to provide and pay for security personnel for crowd control and traffic direction purposes. The Fire Department may require the Applicant to provide and pay for EMS and fire watch personnel or both. Police, Fire and EMS costs are exempt from prior notice provisions. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements. Applicant shall also be responsible for any replacement and restoration costs as set in this Agreement.

20. REIMBURSEMENT OF COSTS AND EXPENSES.

- a. Subject to the terms hereof, Applicant shall pay City for all costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of any invoice from City. If total amount is not paid within fourteen (14) days, interest charges of four percent (4%) annual percentage rate shall be applied.

- b. Should Applicant disagree with the invoice provided by the City, Applicant shall state its reason(s) in writing no less than Forty-Eight hours of Applicant's receipt of City's invoice and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may file a petition to the City Commission to review the City Manager's decision. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

21. **AUTHORITY OF CITY MANAGER.** Applicant shall coordinate the use of Licensed Area in accordance with the terms hereof and this Agreement. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Licensed Area any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right. The decision of the City Manager in such regard shall be final and binding.

22. **LICENSE SUSPENSION OR REVOCATION.**

a. Temporary or Emergency suspension.

1. The city may temporarily suspend licensee's services on any portion of the Public Beach that is approved for use in conjunction with a city approved special event, or for city to perform maintenance or repairs, or during periods of prohibitive measures imposed for high impact events pursuant to section 8-55.5 of the City Code. The city manager or the city manager's designee shall provide prior written notice to the licensee and licensee shall immediately discontinue all food and beverage services on the Public Beach.
2. The city may suspend licensee's services without any prior written notice upon the issuance of a severe storm, tropical storm or hurricane watch or warning by the National Weather Service or any other local, state or federal authority, including the National Hurricane Center. Licensee shall immediately discontinue all food and beverage services on the Public Beach.

b. Suspension or revocation for non-compliance.

1. The city manager or his designee shall have the right to suspend any beach service license for non-compliance with any of the requirements of this section and licensee shall immediately discontinue all food and beverage services on the Public Beach upon receipt of a suspension notice from the city manager. Licensee is required to correct any deficiencies or failure to comply with any provisions of the license within forty-eight (48) hours after a written notice is issued by the city manager or his designee.

2. In the event licensee fails to correct the deficiencies or fails to comply with the terms and conditions of a license issued under this section within the forty-eight (48) hour curing period, and the licensee did not secure a written extension to cure from the city manager or his designee prior to the expiration of the 48-hour curing period, the city manager or his designee shall have the option to immediately revoke the license and licensee shall immediately discontinue all food and beverage services on the Public Beach.
- c. Appeal. Should the city manager or his designee suspend or revoke a license under this Agreement, the Applicant shall have thirty (30) calendar to file an appeal pursuant to Section 8-55.4.

23. **TERMINATION.**

- a. In the event City Manager or City Commission permanently revokes Applicant's License under this Agreement and Applicant fails to timely file an appeal as provided in this Agreement and City Code Section 8-55.4, this Agreement and all rights and permitted use hereunder shall automatically terminate on the same date a the license revocation takes effect, with no further notice to Applicant.
- b. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer operate the Licensed Area and all licenses granted to Applicant and/or use(s) permitted to Applicant this Agreement shall immediately terminate and be of no further force or effect. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election upon no less than thirty (30) days prior to the effective date of the termination. Applicant shall be obligated to reimburse City for any out of pocket costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement.
- c. It is expressly understood that City may seek to terminate this Agreement if the City decides it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice section of this Agreement, and the Applicant shall have Forty-Eight (48) hours to cure the reason for the termination to the exclusive satisfaction of the City. In the event of a declaration of an emergency or imminent threat to the public's health or safety, the City may terminate this Agreement at any time without prior notice to the Applicant.

24. **BREACH.** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement and any and all permitted use and licenses approved thereunder, except that before such termination, City shall provide the Applicant with written notice of the breach and Applicant shall be provided an opportunity to cure the breach within Forty-Eight (48) hours from the receipt of City's notice. Notice of any breach may be sent by facsimile followed by hand delivery of the notice as provided in this Agreement.

25. **FORCE MAJEURE.** In the event the Licensed Area shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within five hundred (500) miles of the Licensed Area, act of terrorism, war, act of God or other disaster or epidemic, (collectively or separately, "Force Majeure Event"), then either party may terminate this Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for its own costs and expenses, except that Applicant will reimburse City for all actual costs incurred related to the License and/or its compliance as provided in this Agreement, as otherwise provided for hereunder.

26. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

27. **AMENDMENT.** No modification, amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

28. **WAIVER OF BREACH.** Failure by City to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

29. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between City and Applicant and supersedes all prior negotiations, representations or agreements either written or oral.

30. **NOTICE.** Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City Manager
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City Attorney
City of Fort Lauderdale
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

APPLICANT:

Michael Winston
Capri Hotel, LLC
30 Hudson Yards, 72nd Floor
New York, NY 10001

31. **SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's becomes final.

32. **NON-DISCRIMINATION.** In the performance of this Agreement, Applicant shall not discriminate against any vendor, hotel guest, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Licensed Area accessible for persons with disabilities.

33. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access to the Licensed Area as required by the City and its employees for the safety and general welfare of the community and all Fort Lauderdale residents, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Licensed Area which may be dangerous or compromised by unruly individuals, Applicant shall immediately correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property, and immediately notify the Fort Lauderdale Police Department.

34. **PUBLIC RECORDS:**

Applicant shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. Applicant recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.**

35. **MISCELLANEOUS PROVISIONS:**

- a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the term of the Agreement.

- b. Applicant acknowledges that it is solely responsible for all utilities for the Licensed Area including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.
- c. Applicant shall be responsible for and agrees to pay City any additional fee structures approved by the City Commission.
- d. In the event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement, City shall be entitled to its costs of collection, repairs, attorney's fees and costs and interest at the maximum rate allowable by law.
- e. The Applicant, after receiving permission by the City's Contract Administrator, reserves the right to add decor, including, but not limited to signage to the location or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.
- g. The Applicant, after receiving permission by the City's Contract Administrator, may conduct its operations on any portion of the Licensed Area and shall retain all rights to such, unless such license is suspended or revoked, or this Agreement is otherwise terminated.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY

WITNESSES:

CITY OF FORT LAUDERDALE, a
Florida municipal corporation:

Signature

Dean J. Trantalis, Mayor

[Witness print or type name]

Signature

Greg Chavarria
City Manager

[Witness print or type name]

ATTEST:

APPROVED AS TO FORM:
D'Wayne M. Spence, Interim City Attorney:

David R. Soloman
City Clerk

Patricia SaintVil-Joseph
Assistant City Attorney

APPLICANT

WITNESSES:

CAPRI HOTEL, LLC, a Delaware Limited Liability Company authorized to transact business in the State of Florida

Signature

By: _____

MICHAEL WINSTON
Authorized Signatory

[Witness print or type name]

Signature

[Witness print or type name]

(CORPORATE SEAL)

ATTEST:

By: _____

Print Name: _____

Title: _____

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, **2023**, by **MICHAEL WINSTON, as Authorized Signatory** for **CAPRI HOTEL, LLC**, a Delaware Limited Liability Company authorized to transact business in the State of Florida. He/she is personally known to me ☐ or has produced as identification ☐. Type of identification produced: _____.

(NOTARY SEAL)

Notary Public, State of _____
(Signature of Notary taking Acknowledgment)

Name of Notary Typed, Printed or Stamped

My Commission Expires: _____

Commission Number: _____

EXHIBIT “A”

SERVICE OPERATING HOURS

[Applicable seven (7) days per week]

General Hours:

10:00 a.m – 6:00 p.m. - October, November, December, January, February, March, April and May

10:00 a.m – 7:00 p.m. - June, July, August, and September

EXHIBIT “B”
DESCRIPTION OF LICENSED AREA

[Upland Hotel’s area description]

**EXHIBIT “C”
PUBLIC SAFETY PLAN**

EXHIBIT “D”
MAINTENANCE OF TRAFFIC PLAN

**EXHIBIT “E”
SITE PLAN MAP**



PARKS AND RECREATION DEPARTMENT

BEACH FOOD AND ALCOHOLIC BEVERAGES APPLICATION

PRD.BFABA

LICENSE APPLICATION FOR THE SALE, SERVICE, AND DELIVERY OF FOOD AND ALCOHOLIC BEVERAGES ON CITY BEACHES BY UPLAND HOTELS

PROCESS: Pursuant to Section 8-55.4, of the City's Code of Ordinances, the Parks and Recreation Department will review all applications from upland hotels for a license to sell, serve, and deliver food and alcoholic beverages on City beaches. Applicants will be notified via e-mail, if application does not meet the submittal requirements and if changes or additional information is required. Completed applications should be provided to the Parks and Recreation Department no later than November 1 in order to allow time to process the application for approval prior to January 1.

An application for a license to sell, serve, and deliver food and alcoholic beverages on the Public Beach for consumption by an upland hotel guest or any person who rents a beach chair from a city-approved beach concessionaire shall be submitted to the city's Parks and Recreation Department by email to cbean@fortlauderdale.gov on forms provided by the department and shall be subject to the minimum requirements set by the department. The Parks and Recreation Department is responsible for the processing and administration of license applications.


FEES: All application fees for the sale, service, and delivery of food and alcoholic beverages on city beaches are calculated at an amount equal to Twenty-Five Dollars (\$25) times the total number of guest rooms at Applicant's upland hotel and shall be due annually on January first of each year, and may be amended from time to time by the City Commission. In addition to the application fee, any additional costs incurred by the City shall be paid by the applicant. Any additional costs, which are unknown at the time of application, are later incurred by the City, shall be paid by the applicant prior to the issuance of the license.

LICENSE FEE: NUMBER OF HOTEL GUEST ROOMS X \$25.00




INSTRUCTIONS: The following information is required pursuant to Section 8-55.4 of the City's Code. The application must be filled out accurately and completely. Please print or type and answer all questions. Indicate N/A if does not apply.

SALE, SERVICE, AND DELIVERY OF FOOD AND ALCOHOLIC BEVERAGES ON CITY BEACHES APPLICATION			
OWNERSHIP / OPERATOR INFORMATION			
PROPERTY OWNER / OPERATOR	Capri Hotel LLC		
PROPERTY OWNER SIGNATURE			
Address, City, State, Zip	30 Hudson Yards, New York, NY 10001		
Phone Number / E-mail Address	(212) 801-3719	mwinston@related.com	
PROOF OF OWNERSHIP	Tax Record	AGENT AUTHORIZATION	Letter Provided
APPLICANT / AGENT'S NAME	Anna MacDiarmid		
APPLICANT / AGENT'S SIGNATURE			
Address, City, State, Zip	401 N Fort Lauderdale Beach Blvd, Fort Lauderdale, FL 33304		
Phone Number / E-mail Address	(347) 582-5360	Anna.Macdiarmid@whotels.com	
BUSINESS / HOTEL INFORMATION			
BUSINESS / HOTEL NAME	W Fort Lauderdale		
BUSINESS / HOTEL ADDRESS	401 N Fort Lauderdale Beach Blvd, Fort Lauderdale, FL 33304		
NUMBER OF HOTEL GUEST ROOMS	450	MULTIPLY X \$25	LICENSE FEE
	519	\$11,475	\$12,975







SUBMITTAL REQUIREMENTS:


-  **APPLICATION PACKAGE** consisting of the application above and following operational plan set and supporting documentation uploaded to the City of Fort Lauderdale's application webpage.

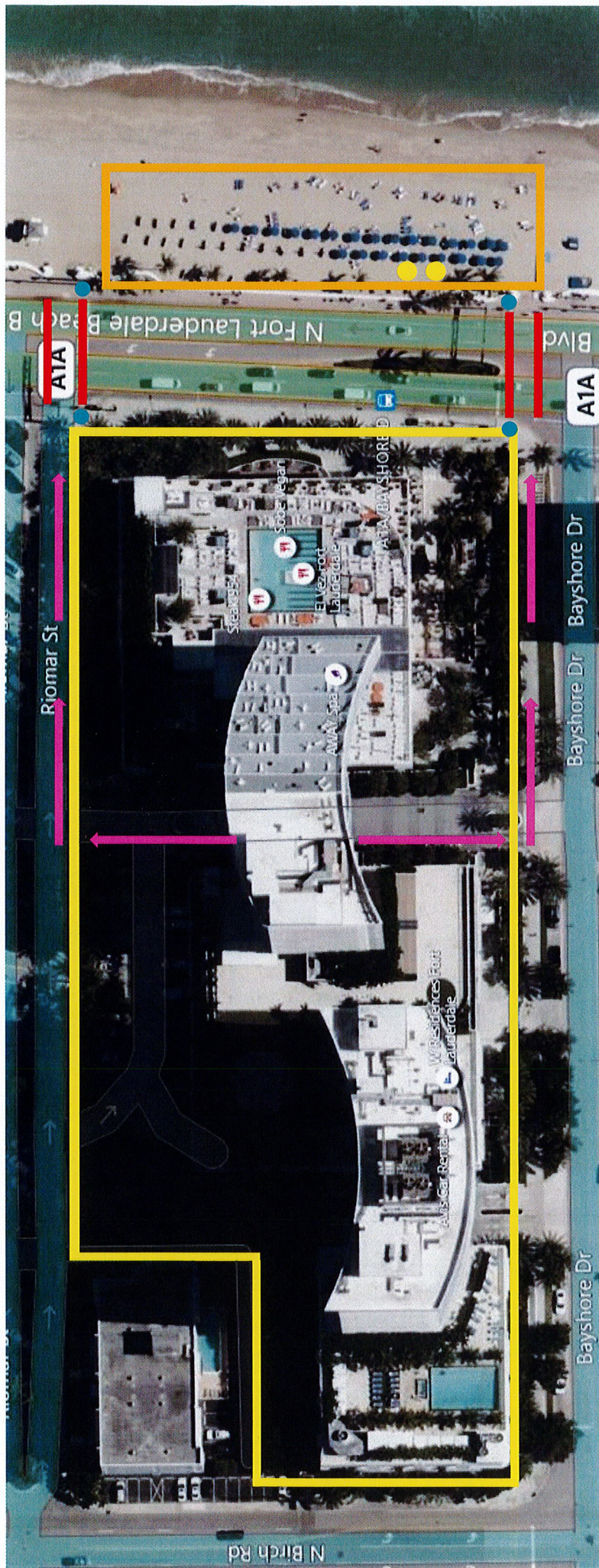
OPERATIONAL PLAN SET:

-  **SITE PLAN** depicting a layout of the hotel's property boundary lines and lines representing the extension of side boundary lines east into the Public Beach representing the proposed location for food and any beverage service on the Public Beach, a detailed description and design of a temporary beachfront structure, if any, including the material to be used for the structure. Any temporary beachfront structure plans shall satisfy all applicable permitting requirements of the City Code and shall be reviewed and processed by the City's Development Services Department.
-  **TRAFFIC CONTROL PLAN** with safety guidelines for service providers and hotel guests expected to cross State Road A1A or any other right-of-way in order to access the Public Beach to ensure no undue interference with the passage of the public on State Road A1A. The traffic control plan and personnel necessary to implement said plan shall be furnished at the sole cost and expense of each licensee.
-  **PLAN FOR THE CONTINUOUS CLEANUP** and deposit of all trash and debris in proper receptacles in compliance with sanitary facilities and any safety inspection requirements, as deemed necessary by the Fire-Rescue, Parks and Recreation Department, and Development Services Department;

SUPPORTING DOCUMENTATION:

-  **APPLICATION** completed (all pages filled out as applicable)
-  **PROOF OF OWNERSHIP** (warranty deed or tax record), including corporation documents if applicable
-  **PROPERTY OWNERS SIGNATURE** and/or Agent Authorization Letter Signed by Property Owner
-  **CODE OF ORDINANCE NARRATIVES** providing point-by-point responses, on upland hotel's letterhead, dated, and signed by the upland hotel's owner/operator or authorized agent, referencing all applicable sections of the Code and indicating how the submittal complies with the criteria.
- o Food and/or beverages to be served, sold or delivered
 - o Policy to ensure that hotel guests and other customers consuming alcoholic beverages and all employees serving or otherwise handling alcoholic beverages are 21 years of age or older
 - o Policy to ensure service providers wear uniforms and name tags that identify the upland hotel as the employer, as more specifically set forth in the license application
 - o Describe the Mobile Point-of-Sale (POS) system that will be used and is compatible with other credit card processing software and necessary electronic equipment to facilitate and manage the food and beverage sale transactions to customers sitting in a city-approved beach concessionaire chair
 - o Statement of Commitment to the exclusive use of recyclable or reusable food and beverage containers, cutlery, and condiment packaging, that all clearly identify the upland hotel as the service provider
 - o Applicant's Hours of Operation on the Public Beach shall be limited to seven (7) days per week, between the hours of 10:00 a.m. through 6:00 p.m. for the months of October, November, December, January, February, March, April and May, and between the hours of 10:00 a.m. through 7:00 p.m. for the months of June, July, August, and September. Any change or deviation to these operating hours requires prior City Commission approval
 - o Statement of Compliance with all applicable federal, state and local laws.
-  **FOOD SERVICE LICENSE** that is current and active with the State of Florida.
-  **LIQUOR LICENSE** that is current and active with the State of Florida.

APPLICANT AFFIDAVIT		STAFF INTAKE REVIEW	
I acknowledge that the Required Documentation and Technical Specifications of the application are met:		For Staff use only:	
PRINT NAME:	Anne MacDiarmid	LICENSE NUMBER:	
SIGNATURE:		REVIEWED BY:	
DATE:	Dec. 14 / 2022	DATE:	



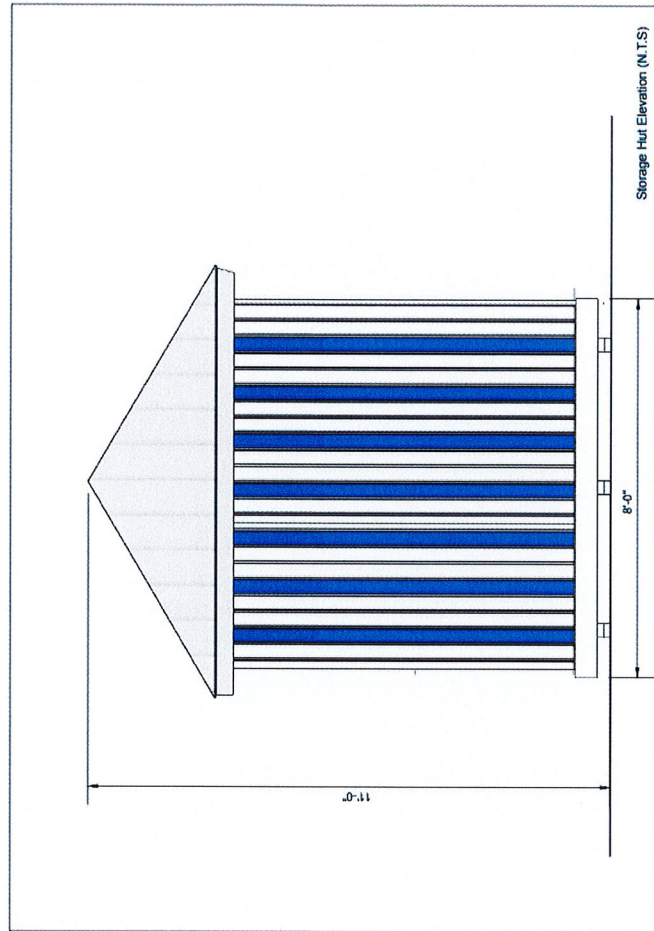
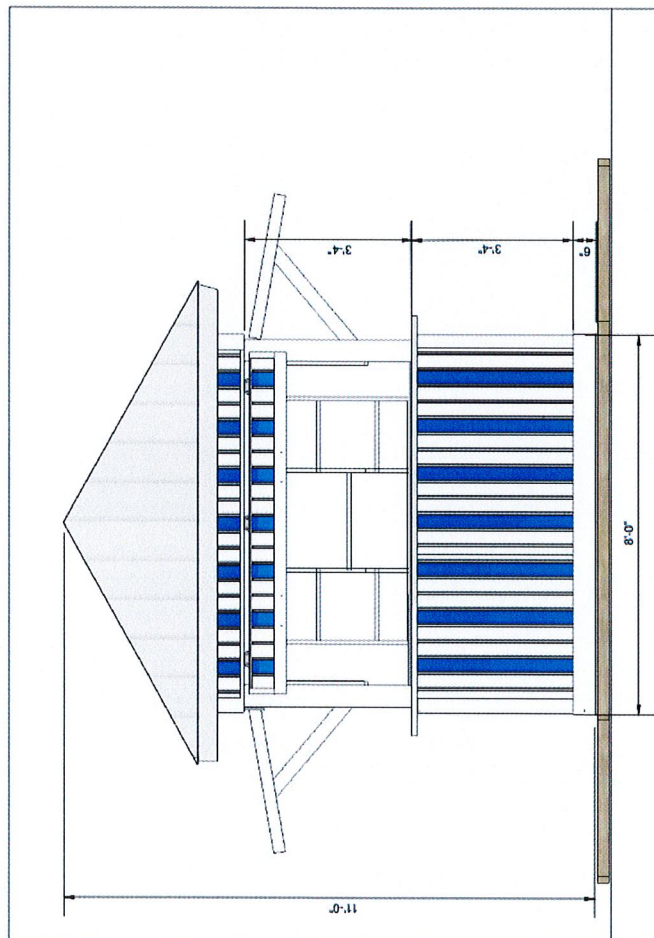
- W Fort Lauderdale boundary lines
- Lines representing the extension of side boundary lines east into the public beach representing the proposed location for food and beverage service on the public beach
- Push button pole
- Cross walk
- Service providers enter and exit location from building
- Proposed location for beachfront structure



Proposed location for beachfront structure

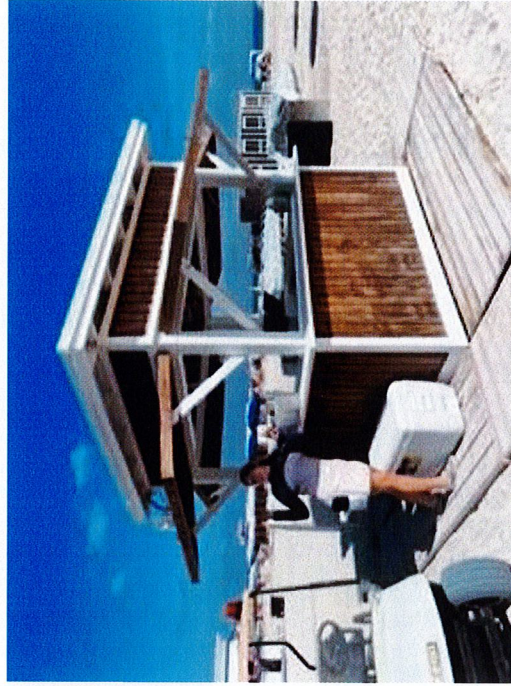
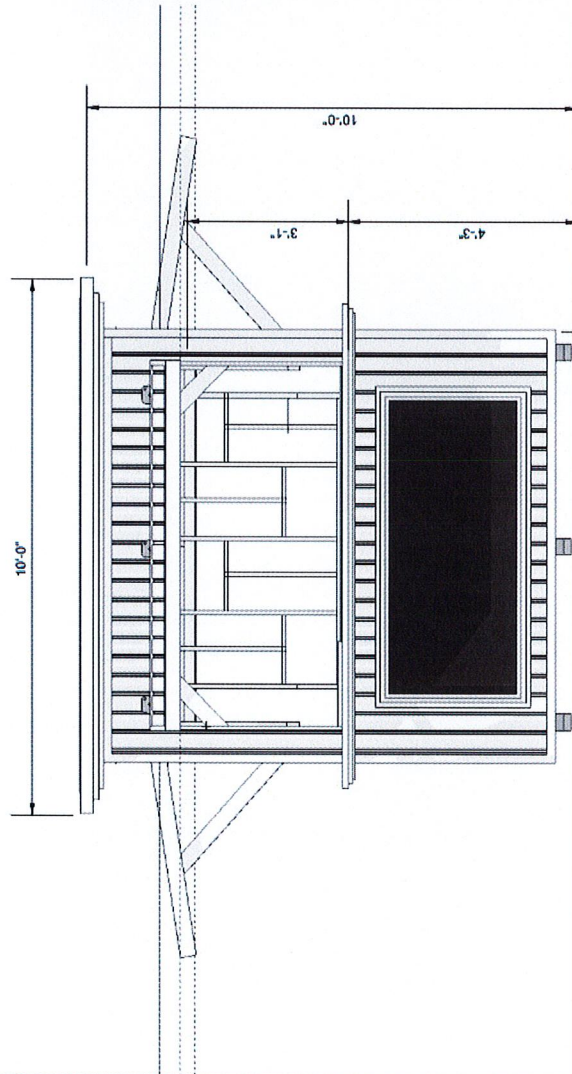


Beachfront Structure Option 1



Description
<ul style="list-style-type: none"> • Teak wood finish recommended due to its durability • Slanted roof generates partial sun exposure

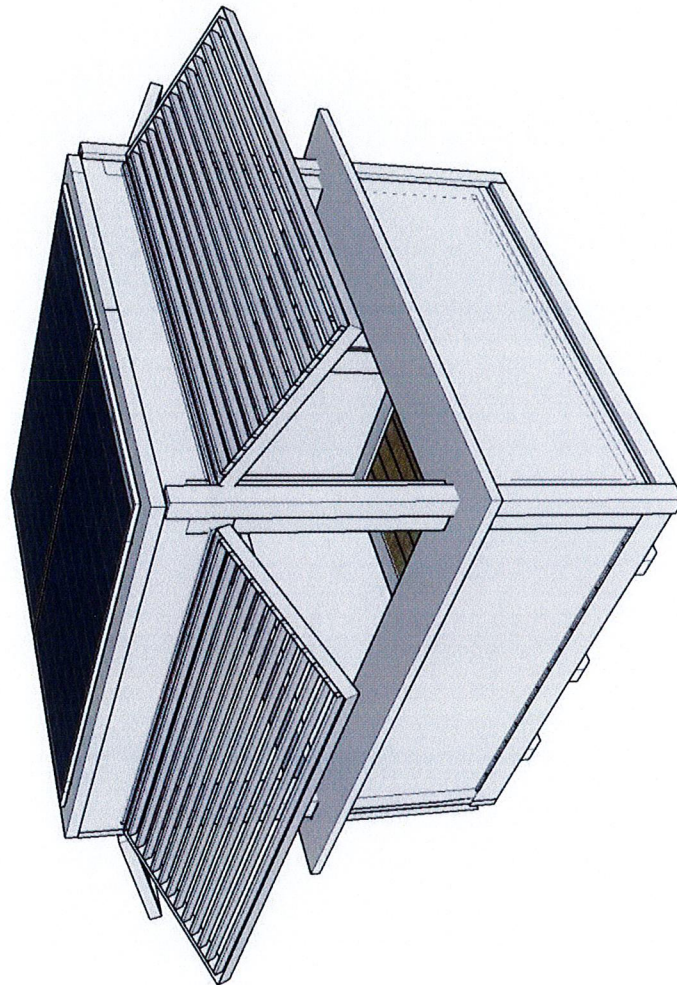
Beachfront Structure Option 2



Description

- Teak wood finish recommended due to its durability

Beachfront Structure Option 3 – Operators preferred option



Description

- Teak wood finish recommended due to its durability
- Flat roof solar panel generates maximum sun exposure

Capri Hotel, LLC
401 N Fort Lauderdale Beach Blvd.
Fort Lauderdale, FL 33304

December 2, 2022

City of Fort Lauderdale
Parks and Recreation Department
Beach Food and Alcoholic Beverages Division
701 S Andrews Ave.
Fort Lauderdale, FL 33316

RE: W Fort Lauderdale Hotel and Residences – 401 N Fort Lauderdale Beach Blvd.

Dear Sirs and Madams,

Capri Hotel LLC, Inc. is the owner of the W Fort Lauderdale Hotel and Residences, located at the address referenced above. A copy of our warranty deed is attached for your convenience.

By this letter, we do hereby authorize Mrs. Anna MacDiarmid, the General Manager of W Fort Lauderdale to represent Capri Hotel, LLC, on all matters relating to our attached license application for the Sale, Service, and Delivery of Food and Alcoholic Beverages on City Beaches by Upland Hotels. A copy of our signed application is attached.

Should you have any questions or require anything further, please let us or Mrs. Anna MacDiarmid know at your earliest convenience. My direct telephone number is (212) 801-3719 and Mrs. MacDiarmid's telephone number is (347) 582-5360. Mrs. MacDiarmid's email is Anna.MacDiarmid@whotels.com.

Sincerely,

Michael Winston
Capri Hotel, LLC

By: 
Its: Authorized Signatory

Cc: Anna MacDiarmid

Prepared By:

AKERMAN LLP
One Southeast Third Avenue, 25th Floor
Miami, Florida 33131-1704
Attn: Richard M. Bezold, Esq.

After Recording, Return To:

GREENBERG TRAURIG, P.A.
450 South Orange Avenue, Suite 650
Orlando, Florida 32801
Attn: Michael J. Sullivan, Esq.

SPECIAL WARRANTY DEED

THIS SPECIAL WARRANTY DEED dated as of July 15, 2014 from CAPRI RESORTS, LLC, a Florida limited liability company (the "**Grantor**"), whose mailing address is 1221 Brickell Avenue, Suite 660, Miami, Florida 33131, to CAPRI HOTEL, LLC, a Florida limited liability company (the "**Grantee**"), whose mailing address is c/o Related Real Estate Recovery Fund, L.P., 60 Columbus Circle, New York, New York 10023.

WITNESSETH that Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00), to Grantor in hand paid by Grantee and other good and valuable consideration, the receipt whereof is hereby acknowledged, hereby grants, bargains and sells to Grantee and Grantee's successors and assigns forever, the following described property situate, lying and being in Broward County, Florida:

SEE EXHIBIT A ATTACHED HERETO AND INCORPORATED HEREIN

TO HAVE AND TO HOLD the same unto Grantee in fee simple,

SUBJECT TO: Easements, covenants, restrictions, limitations and reservations of record, provided this shall not operate to reimpose any of the above; and the recorded title matters set forth in Exhibit B attached hereto and incorporated herein by this reference, provided this shall not operate to reimpose any such matters.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

AND, EXCEPT AS NOTED ABOVE, THE GRANTOR DOES HEREBY SPECIALLY WARRANT the title to said property, and will defend the same against the lawful claims of all persons claiming by, through or under the Grantor, but against none other.

IN WITNESS WHEREOF, the Grantor has signed and sealed these presents to be effective the day and year first written above.

NOTE TO RECORDER: The total consideration paid for the property conveyed by this instrument is \$100, which is the same consideration as its most recent transfer. The grantee named herein is an original mortgagor and borrower under the existing mortgage on this property, which also encumbers other property not conveyed hereby.

{29026454;4}

Signed, sealed and delivered in
the presence of these witnesses:

CAPRI RESORTS, LLC, a Florida limited
liability company

Witness: Seema Mohammed
Print Name: SEEMA MOHAMMED

By: Capri Resorts Manager, Inc., a Florida
corporation, as manager

Witness: Jennifer Kramer
Print Name: Jennifer Kramer

By: Carolyn John
Name: Carolyn John
Title: President

STATE OF Florida)
) ss.
COUNTY OF Broward)

The foregoing instrument was acknowledged before me this 8th day of July, 2014 by Carolyn John, as the President of Capri Resorts Manager, Inc., a Florida corporation, the manager of Capri Resorts, LLC, a Florida limited liability company, on behalf of the company. She is personally known to me or has produced a passport as identification.

Cheryl R. Cotler
NOTARY PUBLIC
My Name, Commission No. & Expiration:

[NOTARY SEAL]



Exhibit A

Legal Description

Shared Facilities Unit of FORT LAUDERDALE RESIDENCES, A HOTEL CONDOMINIUM, according to the Declaration of Condominium thereof as recorded in Official Records Book 47772, Page 1826 of the Public Records of Broward County, Florida.

Exhibit B

Permitted Exceptions

1. Taxes and assessments for the year of 2014 and subsequent years, which are not yet due and payable.
2. Any dispute as to the boundaries caused by a change in the location of any water body within or adjacent to the land, and any adverse claim to all or part of the land that is or was previously under water.
3. Any minerals or mineral rights leased, granted or retained by current or prior owners.
4. Easements and Reservations contained in Warranty Deed recorded May 5, 1944 in Deed Book 444, Page 250.
5. Easements and Reservations contained in Warranty Deed dated April 3, 1945 and recorded in Deed Book 479, Page 527.
6. Terms, covenants, conditions and other matters contained in any unrecorded Lease(s) and all rights thereunder of the Lessee(s) and of any person claiming by, through or under the Lessee(s).
7. Terms and provisions contained in Agreement between Sable Resorts, Inc. and Leisure House Association, Inc. and Assignment and Assumption of Agreement recorded May 4, 2006 in Book 41955, Page 1364.
8. Easement to Florida Power & Light, Co., recorded April 16, 2007, in Official Records Book 43899, Page 1165.
9. Terms, provisions, restrictive covenants, conditions, reservations, rights, duties and easements contained in Declaration of Restrictions and Easements Agreement, and any Exhibits annexed thereto, including all amendments and modifications thereto, including, but not limited to, provisions for a private charge or assessments recorded in Book 47772, Page 1797, as amended by that First Amendment, recorded August 13, 2013, in Official Records Book 50076, at Page 1313.
10. Terms, provisions, restrictive covenants, conditions, reservations, rights, duties and easements contained in Declaration of Condominium of FORT LAUDERDALE RESIDENCES, A HOTEL CONDOMINIUM, and any Exhibits annexed thereto, including all amendments and modifications thereto, including, but not limited to, provisions for a private charge or assessments, recorded in Book 47772, Page 1826, as amended by that certain First Amendment to Declaration of Condominium, recorded August 13, 2013, in Official Records Book 50076, Page 1301.
11. Resolution No. 07-142, Beach Business Improvement Services, recorded October 15, 2007, in Official Records Book 44715, Page 1566.
12. Resolution No. 07-162, Beach Business Improvement Services, recorded October 15, 2007, in Official Records Book 44715, Page 1583.
13. Covenants, conditions and restrictions set out in that Declaration Regarding Maintenance Obligation, recorded October 21, 2008 in Official Records Book 45762, page 1396.
14. Amended and Restated Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents dated as of November 23, 2010 made by Capri Resorts, LLC and Capri Hotel, LLC in favor of PB Capital Corporation as agent, and recorded in Official Records Book 47542, Page 1461, Public Records of Broward County, Florida; as amended by First Amendment to Amended and Restated Mortgage, Security Agreement, Financing Statement, Fixture Filing

and Assignment of Rents dated as of February 16, 2011 and recorded in Official Records Book 47728, Page 301, said Public Records; as assigned to iStar Financial Inc. as agent, by Assignment of Amended and Restated Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents recorded in Official Records Book 50017, Page 1646, said Public Records; as amended by Second Amendment to Amended and Restated Mortgage, Security Agreement, Financing Statement, Fixture Filing and Assignment of Rents dated as of November 27, 2013 and recorded in Official Records Book 50381, Page 1402, said Public Records.

15. Amended and Restated Assignment of Leases and Rents dated as of November 23, 2010 made by Capri Resorts, LLC and Capri Hotel, LLC in favor of PB Capital Corporation as agent, and recorded in Official Records Book 47542, at Page 1497 of the Public Records of Broward County, Florida, as modified by First Amendment to Amended and Restated Assignment of Leases and Rents dated as of February 16, 2011 and recorded February 17, 2011 in Official Records Book 47728, at Page 315 of the Public Records of Broward County, Florida, and as assigned to iStar Financial Inc. as agent, by Assignment of Amended and Restated Assignment of Leases and Rents executed by recorded July 25, 2013 in Official Records Book 50017, at Page 1651 of the Public Records of Broward County, Florida.

Code of Ordinances Narratives

- Food and/or beverages to be served, sold or delivered
 - Food and beverage strictly will be served only to the guests in the concessioner provided beach chairs directly across from the resort. Full service food and beverage experience; taking orders, preparing items and deliver them to the guest.
- Policy to ensure that hotel guests and other customers consuming alcoholic beverages and all employees serving or otherwise handling alcoholic beverages are 21 years of age or older
 - Disclosure on menu stating 21+.
 - All service staff are certified in Food Safety and Tips Training certified by the Florida DPBR. This is to ensure proper service of food and beverage including alcohol.
- Policy to ensure service providers wear uniforms and name tags that identify the upland hotel as the employer, as more specifically set forth in the license application
 - All service staff to be in proper uniform to include a polo shirt with the W logo and the W pin identifying staff member place of work.
 -



- Describe the Mobile Point-of Sale (POS) system that will be used and is compatible with other credit card processing software and necessary electronic equipment to facilitate and manage the food and beverage sales transactions to customers sitting in a city-approved beach concessionaire chair
 - Server will accept credit cards and room charges as methods of payment through the resort existing POS system.



FORT LAUDERDALE

- Statement of Commitment to the exclusive use of recyclable or reusable food and beverage containers, cutlery, and condiment packaging, that all clearly identify the upland hotel as the service provider

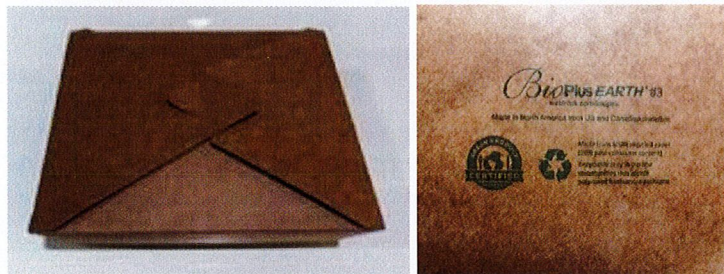
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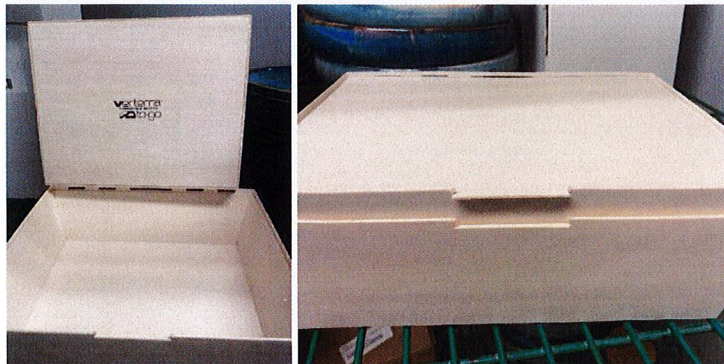
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Code of Ordinances Narratives

- Statement of Compliance with all applicable federal, state and local laws
 - In accordance with the Beach Food and Alcoholic Beverages Application, I hereby certify that W Fort Lauderdale complies with all applicable federal, state and local laws.

A handwritten signature in black ink, appearing to read 'Anna MacDiarmid', enclosed within a horizontal oval shape.

Anna MacDiarmid

General Manager

W Fort Lauderdale

December 9, 2022



FORT LAUDERDALE

- Applicant's Hours of Operation on the public beach shall be limited to seven (7) days per week, between the hours of 10:00 a.m. through 6:00 p.m. for the months of October, November, December, January, February, March, April and May, and between the hours of 10:00 a.m. through 7:00 p.m. for the months of June, July, August, and September. Any change or deviation to these operating hours requires prior City Commission approval
 - Service to mirror hours of operation of the beach chairs in front of the hotel with overall service hours not to exceed 10am – 6pm.

A handwritten signature in black ink, appearing to read 'Anna MacDiarmid', enclosed within a horizontal oval.

Anna MacDiarmid

General Manager

W Fort Lauderdale

December 9, 2022



2023 Florida Annual Resale Certificate for Sales Tax

DR-13
R. 10/22

This Certificate Expires on December 31, 2023

Business Name and Location Address

Certificate Number

CAPRI HOTEL LLC
W FORT LAUDERDALE
401 N FTL BCH BLVD
FORT LAUDERDALE, FL 33304-4205

16-8014910872-7

By extending this certificate or the certificate number to a selling dealer to make eligible purchases of taxable property or services exempt from sales tax and discretionary sales surtax, the person or business named above certifies that the taxable property or services purchased or rented will be resold or re-rented for one or more of the following purposes:

- Resale as tangible personal property
- Re-rental as tangible personal property
- Resale of services
- Re-rental as commercial real property
- Incorporation into tangible personal property being repaired
- Re-rental as transient rental property
- Incorporation as a material, ingredient, or component part of tangible personal property that is being produced for sale by manufacturing, compounding, or processing

Your *Florida Annual Resale Certificate for Sales Tax* (Annual Resale Certificate) allows you or your representatives to buy or rent property or services tax exempt when the property or service is resold or re-rented. You **may not** use your Annual Resale Certificate to make tax-exempt purchases or rentals of property or services that will be used by your business or for personal purposes. Florida law provides for criminal and civil penalties for fraudulent use of an Annual Resale Certificate.

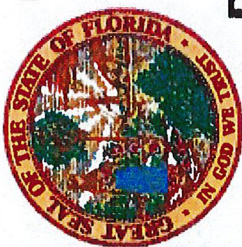
As a seller, you must document each tax-exempt sale for resale using one of three methods. You can use a different method each time you make a tax-exempt sale for resale.

1. Obtain a copy (paper or electronic) of your customer's current Annual Resale Certificate.
2. For each sale, obtain a transaction authorization number using your customer's Annual Resale Certificate number.
3. Each calendar year, obtain annual vendor authorization numbers for your regular customers using their Annual Resale Certificate numbers.

Online: Visit floridarevenue.com/taxes/certificates

Phone: 877-357-3725 and enter your customer's Annual Resale Certificate number

Mobile App: Available for iPhone, iPad, and Android devices



Ron DeSantis, Governor

Melanie S. Griffin, Secretary



STATE OF FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

DIVISION OF HOTELS AND RESTAURANTS

THE NON-SEATING FOOD SERVICE (2010) HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 509, FLORIDA STATUTES

NBR. OF SEATS: 0

CAPRI HOTEL LLC

C-5 WARMING KITCHEN
3101 BAYSHORE DR
FORT LAUDERDALE FL 33304

LICENSE NUMBER: NOS1622154

EXPIRATION DATE: DECEMBER 1, 2022

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.





**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

**DIV OF ALCOHOLIC BEVERAGES & TOBACCO
2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-0783**

850.487.1395

**CAPRI HOTEL LLC (DELAWARE)
W FORT LAUDERDALE / LIVING ROOM / STEAK 954/ EL VEZ
401 N FT LAUDERDALE BEACH BLVD
FT LAUDERDALE FL 33304**

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION**

**BEV1619073 ISSUED: 03/07/2022
TOB-DUAL LICENSE
RETAILER OF ALCOHOLIC BEVERAGES
CAPRI HOTEL LLC (DELAWARE)
W FORT LAUDERDALE / LIVING ROOM /**

IS LICENSED under the provisions of Ch 561 FS.
Expiration date MAR 31, 2023 L2203070000586

DETACH HERE

RON DESANTIS, GOVERNOR

MELANIE S. GRIFFIN, SECRETARY

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIV OF ALCOHOLIC BEVERAGES & TOBACCO**

LICENSE NUMBER	SERIES	TYPE	TOBACCO
BEV1619073	4COP	S	DUAL LICENSE

The RETAILER OF ALCOHOLIC BEVERAGES
Named below IS LICENSED
Under the provisions of Chapter 561 FS.
Expiration date: MAR 31, 2023

**CAPRI HOTEL LLC (DELAWARE)
W FORT LAUDERDALE / LIVING ROOM / STEAK 954/ EL VEZ
401 NORTH FORT LAUDERDALE BEACH BL
FORT LAUDERDALE FL 33304**



**CANNOT MOVE FROM
THIS LOCATION**



ISSUED: 03/07/2022

DISPLAY AS REQUIRED BY LAW

SEQ # 12203070000586

Exhibit 1
Page 20 of 23



**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION**

2601 BLAIR STONE ROAD
TALLAHASSEE FL 32399-1011

Congratulations! With this license you become one of the nearly one million Floridians licensed by the Department of Business and Professional Regulation. Our professionals and businesses range from architects to yacht brokers, from boxers to barbeque restaurants, and they keep Florida's economy strong.

Every day we work to improve the way we do business in order to serve you better. For information about our services, please log onto www.myfloridalicense.com. There you can find more information about our divisions and the regulations that impact you, subscribe to department newsletters and learn more about the Department's initiatives.

Our mission at the Department is: License Efficiently, Regulate Fairly. We constantly strive to serve you better so that you can serve your customers. Thank you for doing business in Florida, and congratulations on your new license!



**STATE OF FLORIDA DEPARTMENT
OF BUSINESS AND PROFESSIONAL
REGULATION**

NOS1622154
NON-SEATING FOOD SERVICE (2010)
CAPRI HOTEL LLC
C-5 WARMING KITCHEN

ISSUED: 01/31/2022

Signature

LICENSED UNDER CHAPTER 509, FLORIDA STATUTES
EXPIRATION DATE: DECEMBER 1, 2022

Ron DeSantis, Governor

Melanie S. Griffin, Secretary

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF HOTELS AND RESTAURANTS**

LICENSE NUMBER: NOS1622154

EXPIRATION DATE: DECEMBER 1, 2022

THE NON-SEATING FOOD SERVICE (2010) HEREIN IS LICENSED UNDER THE
PROVISIONS OF CHAPTER 509, FLORIDA STATUTES

CAPRI HOTEL LLC
C-5 WARMING KITCHEN
3101 BAYSHORE DR
FORT LAUDERDALE FL 33304



ISSUED: 01/31/2022

Always verify licenses online at MyFloridaLicense.com

Do not alter this document in any form.

This is your license. It is unlawful for anyone other than the licensee to use this document.

Plan For The Continuous Cleanup

- All food and beverage items will be presented in melamine reusable containers with fully compostable and biodegradable containers with compostable lids and straws. All items will be transported with a tote bag.
- Beach runner will bring all items to the guest and will collect finished containers to be brought back to the hotel to be washed.
- Beach runner will be responsible for doing 15min area checks of all beach areas for any trash and will collect for disposal. All used items will be collected and brought back to the resort to be properly disposed in recycling and composting bins.
- Manager at the end of shift will do a walkthrough of the beach to ensure no items were left behind.

Traffic Control Plan

- Riomar St and Bayshore Dr will be the 2 routes designated for service staff to cross to and from the beach. Staff will cross A1A only when given visual authority of the green light in the crosswalk.
- Food and Beverage offerings will be from the In Room Dining kitchen. All menu items will be curated based on their ability to travel well and ease of consumption on the beach. Hot and cold items will be offered.
- Beach Shack will be built to house POS system along with significant portion of beverage offerings, this will alleviate need to cross A1A for beverage orders as most beverage orders will be completed with items on hand in the Shack.

CITY OF FORT LAUDERDALE

TEMPORARY BEACH LICENSE AND OUTDOOR EVENT AGREEMENT

THIS AGREEMENT, with and effective date of _____, 2023, is entered into by and between:

THE CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as “**City**”

and

FLORIDA PANTHERS HOCKEY CLUB ENTERPRISES, INC., a Florida profit corporation, hereinafter referred to as “**Applicant**.”

WHEREAS, subject to the terms and conditions contained herein, Applicant has requested approval from the City to conduct the **2023 Truly Hard Seltzer NHL All-Star Beach Festival**, or other title as determined by Applicant, which includes a beachfront music concert together with the NHL All-Star Beach Bash presented by New Amsterdam Vodka,

hereinafter referred to as the “**Event**;”

WHEREAS, in accordance with the terms hereof, Applicant shall provide the required certificates of insurance and agrees to indemnify and hold harmless the City of Fort Lauderdale for any damage to persons or property that occurs as a sole and direct result of the actions or inactions of Applicant in connection with and/or as a result of the operation of said Event as set forth herein; and

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to entertain extensions to this Agreement to accommodate any unforeseen scheduling conflicts by Applicant during the term of this Agreement, and the City will not enter into an Agreement or approve an event permit for another event on the same date and time as Applicant’s Event, not produced by the Applicant , which is substantially similar in size, scope, magnitude, and character to the Event; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. All attached and referenced Exhibits are also incorporated herein by this reference.

2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:
- a. “Agreement” means this Agreement between the City and Applicant, including all of the attached and referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
 - b. “Applicant” means Florida Panthers Hockey Club Enterprises, Inc., a Florida for-profit corporation.
 - c. “City” means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
 - d. “Contract Administrators” means the City of Fort Lauderdale’s City Manager for the City or designee and the authorized designees of Florida Panthers Hockey Club Enterprises, Inc. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. Except as provided for in this Agreement, the Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City and Applicant.
 - e. “City Manager” means the City of Fort Lauderdale’s City Manager or his/her designee.
 - f. “Event Impact Areas” means the areas outside the Event Site that are directly impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined by the City in consultation with Applicant and may change over time as the attendance at the event or the use of mass transit service changes. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager’s decision shall be final as to the determined Event Impact Areas.
 - g. “Event Period” means the time periods as more fully described in **Exhibit “A”** of this Agreement.
 - h. “Event Site” means collectively the area on the barrier island used to hold the Event from the B Ocean extending north to SE 5th Street and A1A to the Atlantic Ocean, together with a portion of Las Olas Oceanside Park, as more specifically described in **Exhibit “B”** as part of the Site Plan.
 - i. “Maintenance of Traffic Plan” also referred to as MOT Plan shall have the meaning given to such term in Section 6.d of this Agreement and more specifically described in **Exhibit “C”** upon timely submission in accordance with this Agreement.

j. “Public Safety Plan” shall have the meaning given to such term in Section 6 of this Agreement.

k. “Repair” shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Event Site, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties (other than the City and its agents, officers, contractors and employees), including licensees or invitees of the Applicant, related to the Event. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors or subcontractors.

l. “Site Plan” shall have the meaning given to such term in Section 8.

m. “Term” shall have the meaning given to such term in Section 4.

3. **PERMISSION TO USE.** Subject to the terms hereof, Applicant is hereby authorized and entitled to use the portions of the Event Site owned by the City during the Event Period in order to conduct the Event. The actual extent of the area to be used shall be limited by the water line and the Maintenance of Traffic (“MOT”) Plan and the approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site as allowed by law. It is Applicant’s sole responsibility to obtain written permission from owner(s) of any portion of the property described in the Event site that is not owned by the City. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Other City properties, if appropriate and mutually agreed upon in writing by the City and Applicant, may also be used for the Event. Upon request, and subject to the terms of this Agreement, the City Manager or designee shall have the right to approve or deny the use of promotional materials and advertising for the Event that contains the location, name and/or images of the Event Site, which approval shall not be unreasonably withheld. If, upon review, the City Manager or designee, acting in good faith, denies the use of certain promotional materials, the City shall identify with specificity the basis for such denial and the Applicant shall use best commercially reasonable efforts to remove the specifically restricted materials from future publication. All alcohol sales during the Event shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

Subject to and in accordance with the terms of this Agreement, Applicant shall have the sole, exclusive and unrestricted right, without any approval or consent from the City, to conduct the following activities (collectively, the “**Event Activities**”) at the Event Site during the Event Period, whether directly by Applicant or indirectly through the hiring of third-parties: (i) retail and merchandise services, including the sale of the merchandise; (ii) product serving, display and sampling, including food and beverage sampling by Applicant’s Partners (as defined below) and giveaways; (iii) traditional and interactive entertainment services, including live and recorded music; (iv) temporary advertising, promotion and sponsorship activities, including vehicle displays; (v) photographic, audio, visual and/or audiovisual recordings; and (vi) such other

activities in connection with the Event as Applicant shall determine in its sole discretion, subject to the terms of this Agreement. The beginning and ending times, setup and location of each of the foregoing shall be determined by Applicant in its sole discretion. As between the City, Applicant, Applicant shall retain one hundred percent (100%) of any and all revenue received in connection with the Event.

Applicant has various corporate marketing and other commercial agreements with third-parties that grant such third-parties various rights (exclusive and otherwise) for and in connection with the National Hockey League and its events and initiatives, including without limitation, the Event (each, an “**Applicant Partner**” and collectively, the “**Applicant Partners**”). Applicant will have the sole, exclusive and unrestricted right, without any approval or consent from the City, to sell advertising, sponsorship and other associated rights relating to the Event, including, without limitation, the Event title and presenting sponsorships, Event Activities and all forms of advertising, branding and other activation in, on and around the Event Site, during the License Period. In connection with the foregoing, Applicant’s right to sell advertising, sponsorship and other associated rights relating to the Event and Event Activities (and to announce the same) will be notwithstanding any other existing advertising, sponsorship or other third-party relationships in, on, around or otherwise related to the Event Site, or to any other obligations to which the City may be subject. The City shall not engage in any act or omission in connection with the Event which would interfere with, disturb or otherwise limit Applicant’s ability to fulfill its obligations to the Applicant’s Partners. Applicant shall control the design and printing of all Event-related signage for the Event, including, but not limited to, Event directional signage. Applicant agrees any and all speech displayed on any promotional or marketing material at the Event Activities, prepared or designed by Applicant or any of Applicant’s Partners under Applicant’s control, shall be content-neutral and shall not be obscene, defamatory or discriminatory in nature.

4. **TERM:** The Term of this Agreement shall commence on the effective date upon execution of this Agreement by all Parties and shall expire on February 9, 2023.

5. **TEMPORARY BEACH LICENSE GENERAL TERMS.**

a. The terms and conditions outlined in Sections 8-54 and 8-55 of the Code of Ordinances of the City of Fort Lauderdale, shall be incorporated into this Agreement as if fully stated herein.

b. The Applicant agrees to pay \$500.00 per day for each Event use of the beach.

6. **PUBLIC SAFETY PLAN FOR THE EVENT.** Because of the physical size of the Event and the number of people that may attend, City shall arrange for, in consultation with Applicant, all necessary personnel to provide public safety at the Event Site and Event Impact Areas. The parties will consult with each other in regard to the levels of security including the scaling down of such services for the set up and breakdown of the Event. City reserves the right to require, in good faith, and in consultation with Applicant, that additional services be provided, at the sole cost to Applicant, to ensure the appropriate level of public safety and other City services, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and

Expenses. These services shall include, without limitation, crowd control, traffic management, fire rescue, ocean rescue, emergency medical services, and police services. Applicant is required to provide signage, traffic barricades, and cones to facilitate public safety and will set up and remove same at no cost to the City.

a. The Applicant, shall provide a Public Safety Plan to City no later than ninety (90) days prior to the date of the Event. This plan shall include, but not be limited to, the Applicant's planned actions to respond to and mitigate various potential criminal and emergency incidents which may occur during the Event. After receiving the final private security and Event Public Safety Plan from the Applicant, the City shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. City shall develop an anticipated budget for the Public Safety Plan and other City services, and provide the anticipated budget to the Applicant not more than ten (10) days following receipt of the Public Safety Plan. In the event of a disagreement between Applicant and the City regarding the number of personnel required for the Public Safety Plan and the anticipated budget of the Public Safety Plan, the City Manager shall seek to resolve such disagreement by taking into account the best interest of the public's safety and the reasonable cost for implementing the Public Safety Plan. The City Manager's decision shall be final as to the appropriate level of staffing for the Public Safety Plan and the anticipated budget for the Public Safety Plan. City agrees to include in its anticipated budget to the Applicant the number of proposed on-site City personnel that will be assigned during the Event as allowed by Florida Statute. Due to the sensitive security and safety implications, including related input and responsive staffing plans provided by the City, the Public Safety Plan shall not be available for public or media distribution, except where disclosure is required by law.

b. The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event. Both parties agree that an essential element of the Event's Public Safety Plan includes a procedure, mutually agreed upon in advance; that the Applicant, or its respective designees must follow during the Event to record the number of participants within the Event Site at any given time. Participant numbers must be real time and verifiable by City public safety personnel. In the event the primary participant count process fails during the Event, the Applicant, or its respective designees must have a contingency process in place and readily available for activation to ensure accurate continuation of participant counts. This contingency procedure along with the initial participant verification procedure shall be included and approved by the City in advance and as part of the Public Safety Plan. The City's Contract Administrator, City Police or Fire personnel shall have the right to request participant numbers from the Applicant at any time throughout the course of the Event.

c. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors, to include nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These

plans will be fluid up until the conclusion of the event and may change based on real time intelligence, threat information, and other relevant input. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), Navy Criminal Investigative Service (NCIS), and other public safety partners will assist in determining the level and magnitude rating of this event, advise of any potential national security considerations and provide intelligence gathering and event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials and Police/Fire personnel only and shall not be available for public or media distribution.

d. Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City a MOT Plan, incorporated into this Agreement and marked as Exhibit "C". The MOT shall contain a construction automotive and pedestrian traffic flow schedule detailing the opening and closing times for all streets, lanes, pedestrian walkways and traffic corridors and outlining the use of any and all variable message signs for the City's review and approval. No additional street, lane or traffic corridor closures will be permitted unless included in an updated MOT Plan and approved by the City. Applicant agrees to provide the City with emergency access to all areas included in the Event Site to ensure the safety and welfare of the community.

e. The cost for any additional services or expansion of services requested by Applicant, in writing (email is sufficient), shall be an expense to Applicant and City shall be paid for all costs and expenses in association with any such addition or expansion of services provided to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. Expansion of services means enhancements of activities, any changes in the type of activities provided or changes in parameters of Event or the Event Site, caused by or requested by Applicant, including physical location and boundaries that result in an increase in the City's cost to provide all necessary services.

f. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses.

g. In the event of an emergency or disaster during the Event, at the Event Site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, it shall be the responsibility of the Applicant to reimburse the City's reasonable, actual and documented additional cost to respond to such emergency or disaster that the City would not have otherwise incurred had such Event not been taking place. This section shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane, lightning strike, tornado or any other such causes whatsoever beyond the control of the parties and unrelated to the Event.

h. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences during the course of the Event.

i. If the Event includes use of fireworks, Applicant shall obtain a fireworks permit from the City's Fire Department no less than ten (10) days prior to the Event. The Applicant shall comply with all applicable state laws and regulations regarding the use of fireworks.

7. **STREET CLOSINGS.** The City reserves the right to approve all street closings, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closings should be included with the MOT Plan that is submitted by Applicant and any updated MOT Plan. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.

8. **SITE PLAN.** Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City the following:

a. For the Event Site and Event Impact Areas, a detailed Site Plan for the Event showing locations that will be designated for Applicant's, and its respective designees' exclusive use, detailing the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, and other such services together with the boundary lines, including those down to the waterline as allowed by law, of any fences, barriers etc. to be constructed at the Event Site, and the times when such borders, fences and/or facilities will be constructed, operated and dismantled. Such Site Plan shall be subject to the review and approval by the appropriate City departments, such approval not to be unreasonably withheld or delayed. Any additional changes made to the Site Plan by Applicant, after reviewed by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld or delayed. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, stages, etc. are in accordance with the City approved site plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as **Exhibit "D."**

b. A description of all activities and events to occur at the Event Site and Event Impact Areas including permissible activities and any maintenance of the waterline fence, barrier and borders during the Event.

c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.

d. Copies of all applicable permits and licenses required by the City's Sustainable Development Department and Fire Department. These permits include, but are not limited to, permits necessary for tents, merchandise, food and beverage vendors, electrical connections, fireworks, Florida Department of Environmental Protection (FDEP) permits,

and other County or State permits.

9. **NON-PUBLIC SAFETY SERVICES.** City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's, and its respective employees or contractors related to Event transportation, setup, storage, maintenance, Repair or replacement of property, cleanup and breakdown of Event Site including removal of barricades and safety cones. Applicant shall remain an independent entity at all times.

10. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS.**

a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities which shall be of the type and in sufficient number as to meet the requirements established by the Department of Sustainable Development. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Cost and Expenses.

b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Event Site or in the designated Event Impact Areas. All trash shall be collected and removed throughout the Event with final cleanup being completed within 24 hours of the Event completion or take-down of the Event, or within established time frames as agreed to by City. The requirement to remove trash and debris includes street sweeping. Applicant will reimburse City for all actual and documented costs associated with trash and debris removal within the Event Site and Event Impact Areas.

c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

d. Applicant shall be responsible for the clean-up of all temporary flooring which supports tour buses and equipment.

11. **PARKING AND TRANSIT SERVICES.** It will be the responsibility of Applicant to arrange and coordinate all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City as part of the MOT Plan and any updated MOT Plan. City agrees to invoice Applicant at the approved special event parking rate of \$30 dollars per space per day to use the Fort Lauderdale Beach Park Parking Lot during the Event Period and any other public metered parking spaces that are removed from public use as requested by the Applicant and approved by the City. All parking lot requests must be in writing at thirty (30) days in advance of the Event. An estimate of parking charges will

be provided to Applicant no more than seven (7) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event. Applicant agrees to reimburse the City, for any loss of parking property from any City parking facilities within the Event Site that occurred during the Event, whether such loss is the result of theft or vandalism, including but not limited to parking meter machine, meter bags and parking signs, to an amount equal to the actual and documented cost of repair or replacement of the item.

12. CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS.

a. Applicant, and/or its respective designees shall be allowed to construct and maintain on the Event Site, such facilities and structures that are necessary for the Event including, but not limited to, fences, barriers and grandstands and signs as approved by the City and at such locations as approved by the City, such approvals not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement.

b. All such structures, facilities, concession stands and canopies may be erected and deliveries related thereto may begin at the Event Site on the date specified in Exhibit A. All such structures must be removed by the specified take-down date set forth in Exhibit A. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with the normal operations of the property. Any setup or breakdown of such structures at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance, Chapter 17 of the City of Fort Lauderdale Code of Ordinances, as amended.

c. Applicant is hereby granted permission to erect canopies, tents, and concession stands, at such locations in accordance with the approved Site Plan. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned is conditioned upon Applicant complying with the following:

- (i) Within ten (10) days of the Event Period, Applicant shall file with the City Manager a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate during the Event. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such concessions, tents or canopies at the Event Site. Any and all third-party vendors with which Applicant contracts for the sale or distribution of alcohol shall submit a copy of the vendor's liquor liability license at this time. Sponsors of events at which food or beverages will be sold or distributed shall meet all applicable state, county and city health codes. This shall be evidenced by a permit by the appropriate entity.
- (ii) Current flameproof certificates must be provided for all canvas tents,

awnings or canopies and shall be submitted for approval to the city fire departments. Applicant shall obtain approval by the City Fire Department and file with its application evidence that such canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Sustainable Development Department shall review and approve the proposed use of any temporary structure used in association with the Event in accordance with the standard criteria as outlined in the City's Code of Ordinances and Florida Building Code.

d. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Sustainable Development Department, such approval not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement. If electricity is required, Applicant, and/or its respective designees shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. The Department of Sustainable Development shall conduct electrical inspections of all electrical facilities whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections of all electrical facilities.

e. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

f. City will provide Applicant with a list of all City staff members who are required to work at the Event at least ten (10) days prior to the Event. Applicant shall provide City with an "all-access" Event pass for each City staff member identified on the City's list, subject to Applicant's internal policies, and Applicant shall deliver to the City all requested all-access Event passes no later than five (5) days prior to the Event. City shall be responsible for the negligent or wrongful acts and omissions of all City agents, officers, contractors and employees [while acting within the scope of the employee's office or employment, subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised](#). Additionally, Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. Location of this operations tent shall be determined by the City.

13. USE OF EVENT SITE AND PAYMENT FOR DAMAGE TO CITY PROPERTY.

a. Applicant will exercise reasonable care in its use of the Event Site and Event Impact Areas. If such areas are damaged beyond normal wear and tear by the negligent acts or wrongful conduct of the Applicant, or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees, Applicant will reimburse the City an

amount equal to the actual and documented costs of Repair, subject to the provisions of this section.

No more than five (5) days prior to the Event, City, and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk-through inspection to point out to the City the areas of disrepair or pre-existing conditions reasonably visible to Applicant upon a cursory inspection and walk-through. Prior to the end of the Event, City, and Applicant shall inspect the condition of the Event Site and Event Impact Areas and City shall inform Applicant of all necessary Repairs. Applicant shall make all necessary Repairs to restore the Event Site and Event Impact Areas to a condition equal to that existing prior to the Event.

b. Applicant agrees to Repair all core drilling holes in the asphalt, concrete, and all other paved and unpaved surfaces, made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after the conclusion of the Event.

c. Applicant shall be responsible for damage to all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site or Event Impact Areas. Applicant shall be responsible for the costs to Repair any part of the Event Site or Event Impact areas that are damaged during the Event Period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', and agents' personal property, except for repairs or losses of such property caused by the negligence or willful misconduct of the City or its officers, contractors, employees or agents.

d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees' negligence during the Event Period, City shall furnish Applicant with a written report of such damage by the close of business on the Tuesday following the Breakdown of Event. The report shall estimate the cost to remedy such damage. If Applicant arranges for such damages to be repaired by or on behalf of City, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

14. **SECURITY OF APPLICANT'S PROPERTY.** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility or liability, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused by the wrongful or negligent acts of the City or its officers, contractors, employees or agents.

15. **APPLICANT'S CONTRACTS.** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the Event shall be negotiated by Applicant, and/or its respective designees and secured at the sole expense of Applicant, and/or its respective designees, respectively. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event. No employment relationship exists between City and Applicant.

16. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS.** Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations and/or rights under this Agreement, in whole or in part, to any person, business or entity, without the prior written approval of City, such approval not to be unreasonably withheld or denied. Any action by Applicant in contravention of this Section 16 will result in immediate cancellation and termination of this Agreement by City.

17. **LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS.** Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Event Site for any dispensing, serving, sale and/or distribution of the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City ten (10) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, that all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected music material. Applicant shall ensure that all performance payments required to be made under such licenses are made promptly and directly to the licensing organizations. Copies of all said licenses or reports shall be submitted to City upon request, as permitted by law. In the event Applicant fails to submit the licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.

18. **STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES.** Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all applicable federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation, in connection with its obligations under this Agreement. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event. The City agrees that it and its employees, contractors, officers and agents will observe and abide by all applicable federal, state and local laws and the federal and state constitutions in the performance of all work and services to be provided under this Agreement.

19. **INSURANCE.** As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement, the Applicant, at the Applicant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$10,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$10,000,000 each occurrence and \$10,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors which shall include coverage for pyrotechnics.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Liquor Liability

If Applicant engages in the sale and/or distribution of alcohol, Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

If Applicant contracts with a third party vendor for the sale and/or distribution of alcohol, Applicant agrees to cause any and all third party vendors to obtain, pay for and keep in force continuously during the event, liquor liability insurance in an amount not less than \$1,000,000.00 per occurrence. Applicant is required to confirm, in writing, that each vendor of the Applicant carries insurance coverages and limits that meet or exceed the conditions set forth in this Agreement.

Active Shooter Insurance

Applicant shall ensure that there are no exclusions in its liability insurance policy for liability associated with an Active Shooter event.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Watercraft Liability – Not applicable.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of the Event Period contemplated in this Agreement.
- b. The Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice

requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
- f. The City shall be named as an Additional Insured on all applicable liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

If the Applicant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Applicant's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Applicant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the end of the Event Period, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an

updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with the Event to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors maintain commercially reasonable types and amounts of insurance.

20. INDEMNIFICATION AND HOLD HARMLESS. Except in cases of City, its agents, officers, contractors and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Event or caused by, in connection with, arising out of, or resulting from any act or omission by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If a party is called upon by the other party, such party shall defend not only itself, but also the other party in connection with any such claim at the indemnifying party's expense, provided that the indemnified party shall reasonably participate, at the indemnifying party's expense. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any third-party claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the Event (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's and its agents, officers, contractors and employees' negligence or willful misconduct, as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.

Except in cases of Applicant, its agents, officers, contractors and/or employees negligence or willful misconduct, the City agrees to indemnify, defend and hold harmless the Applicant, its affiliates and its respective officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from any negligent or wrongful act or omission by the City, its agents, officers, contractors and/or employees done in the performance of this Agreement while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any early cancellation or termination of this Agreement.

21. LIMITATION OF LIABILITY.

a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement or for any action or claim arising from this Agreement, so that its liability for any such breach or claim or action never exceeds the sum of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination clause.

b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of \$ the City's sovereign immunity Section 768.28, Florida Statutes, as amended or revised, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes, as amended. This Section shall survive any cancellation or early termination clause.

c. The limitation of liability set forth in this section shall not apply to City's indemnification obligations hereunder, claims involving fraud or intentional misconduct of the City or its agents, officers, contractors or employees, or for damages or injuries caused by the City or its agents, officers, contractors or employees' negligence or wrongful misconduct while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised, as determined by a court of competent jurisdiction in the State of Florida as referenced in Section 20 above.

22. COSTS AND EXPENSES FOR CITY SERVICES.

a. As provided for in Section 6 above, Applicant shall plan and provide and coordinate with City personnel to implement the Public Safety Plan. Applicant agrees to reimburse the City for all actual and documented out-of-pocket costs and expenses incurred by the City for services provided for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property, and staff time incurred as a result of the Event; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such costs and expenses, which said approval shall not be unreasonably withheld or delayed prior to the Event. The police department may require the Applicant to provide and pay for security personnel for crowd control and traffic direction purposes, which security services would be deemed a part of this Agreement and not require a separate agreement between Applicant and the City. The fire department may require the applicant to provide and pay for EMS and fire watch personnel or both, which EMS and fire services would be deemed a part of this Agreement and not require a separate agreement between Applicant and the City. Police, fire and EMS costs are exempt from prior notice provisions. Applicant agrees and understands that the

off duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24 hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted and receipt of an undisputed invoice from the City. Applicant agrees to work in good faith with the City and local police regarding positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with this request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such capital improvements, including the costs associated therewith, which said approval shall not be unreasonably withheld or delayed prior to the Event. Applicant shall also be responsible for any replacement and restoration costs as set forth in this Agreement.

b. Applicant agrees to secure a bond, or alternatively, send payment via wire transfer in an amount equal to one hundred and ten percent (110%) of the estimated cost of reimbursement for City services (the "Deposit"), to cover all costs and expenses associated with hosting the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred and ten percent (110%) of the cost of reimbursement for City services ("Obligated Amount") in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions hereinafter set forth ("Escrow Deposit"). The City acknowledges and agrees that in the event Applicant pays the Deposit via a wire transfer, that no bond or escrow would be required by the City under this Agreement.

c. In the event the Applicant elects to deposit the Obligated Amount with the City of Fort Lauderdale Treasurer, who shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.

d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.

e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney's fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.

f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

g. The escrow deposit will be held until all effected departments have submitted their final invoice for the reimbursement of City services including without limitation Public Safety Services. Once the final invoice has been received, the Applicant will be notified for approval. Once approved, the release of escrowed funds earmarked for police services will be wired back to the Applicant's bank account. The Applicant shall release checks to police personnel for payment of off-duty details at the Event within three (3) business days of receiving the escrowed funds.

23. REIMBURSEMENT OF COSTS AND EXPENSES.

a. Subject to the terms hereof, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of an undisputed invoice from City. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. If total amount of any undisputed sums are not paid within fourteen (14) days of invoice receipt, interest charges of four percent (4%) annual percentage rate shall be applied.

b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may

make a petition to the City Commission. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

24. **AUTHORITY OF CITY MANAGER.** Applicant shall coordinate the use of Event Site in accordance with the terms hereof and the approved Site Plan, in consultation with the City Manager. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Event Site any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right, unless due to the fraudulent, bad faith, negligent or wrongful acts or omissions of the City or its officers, agents, contractors or employees in connection with the foregoing **while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.** The decision of the City Manager in such regard shall be final and binding.

25. **TERMINATION:**

- a. This Agreement may be terminated as follows:
 - i. Upon the mutual written agreement of the parties.
 - ii. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Event without penalty. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election one hundred and twenty (120) days prior to the date of the Event. Applicant shall be obligated to reimburse City for any costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement prior to such termination. It is expressly understood that City may seek to terminate this Agreement if the City decides, in its reasonable, good faith discretion, it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the material breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice section of this Agreement, and the Applicant shall have seventy-two (72) hours to cure the reason for the termination to the exclusive satisfaction of the City, acting reasonably. In the event of an imminent threat to the public's health or safety, the City may terminate this Agreement at any time by providing notice as set forth in the Notice section of this Agreement. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties may reasonably mitigate such threat, unless immediate action is required given the circumstances.

- iii. By a party upon the Default of the other party, without limitation of any other available rights or remedies available to such party at law or in equity. “Default” means, after expiration of the applicable notice and cure periods, the failure of a party to comply with or perform any material term, condition, or covenant contained herein which continues for more than thirty (30) business days after the defaulting party’s receipt of written notice thereof (or in the event of an allegation of material breach or default not reasonably curable within thirty business days of such notice, if the defaulting party has not begun using diligent efforts to cure such alleged breach or default within such period). If the alleged breach occurs within thirty (30) business days of the start of the Event Period, the cure period may be reasonably reduced given the circumstances and the imminency of the Event, as set forth in such notice.
- iv. In addition to the termination rights set forth above, the City may seek to temporarily suspend or cancel an Event if the City determines, in its reasonable, good faith discretion, that an imminent and legitimate threat or risk to the public’s health, safety and welfare exists. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties are reasonably able to mitigate such threat or risk, unless immediate action is required given the circumstances. The City’s exercise of the right set forth in this paragraph shall not result in a termination of the Agreement as to any remaining Events, unless otherwise agreed in writing by the parties.

In the event of a termination of this Agreement under this Section 25, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder up to and including the effective date of termination. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the effective date of termination.

26. **BREACH.** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement, except that before such termination, the Applicant shall be entitled to thirty (30) days written notice and an opportunity to cure the breach within such period. Notice of any breach may be sent by electronic mail, followed by hand delivery of the notice as provided in Section 32 of this Agreement.

27. **FORCE MAJEURE.** In the event the Event Site shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within five hundred (500) miles of the Event Site, act of terrorism, war, act of God or other disaster or epidemic, act or failure to act of any governmental or regulatory body (whether civil or military, domestic or foreign) or governmental regulation imposed after the fact (collectively or separately, “Force Majeure Event”), or the Event is cancelled or postponed, including, due to a Force Majeure Event, then either party, following good faith consultation with the other party, may terminate this

Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for their own costs and expenses incurred prior to such termination except if the Force Majeure Event occurs during the Event Period, whereas Applicant will reimburse City for all actual and documented costs incurred related to the Event, as otherwise provided for hereunder. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following such termination.

28. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

29. **AMENDMENT.** No modification, amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

30. **WAIVER OF BREACH.** Failure by City or Applicant to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

31. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between City and Applicant with respect to the Event and supersedes all prior negotiations, representations or agreements either written or oral.

32. **NOTICE.** Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City of Fort Lauderdale
Attn: City Attorney
100 North Andrews Avenue

Fort Lauderdale, Florida 33301

APPLICANT:

Florida Panthers Hockey Club Enterprises, Inc.
Attn: Matthew Caldwell
One Panther Parkway
Sunrise, FL 33323
caldwellm@floridapanthers.com

With a copy to:

Florida Panthers Hockey Club Enterprises, Inc.
Attn: Ed Wildermuth
One Panther Parkway
Sunrise, FL 33323
wildermuthe@floridapanthers.com

With a courtesy copy sent to:
Dean Matsuzaki, Executive Vice President, Events
NHL Enterprises, L.P. (DMatsuzaki@nhl.com)

33. **SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's becomes final.

34. **NON-DISCRIMINATION.** In the performance of this Agreement, Applicant shall not discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Event Site accessible for persons with disabilities.

35. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access required by the City and its employees for the safety and welfare of the community and those attending the Event, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Event Site or Event Impact Areas which may be dangerous, Applicant will promptly correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property.

36. **PUBLIC RECORDS:**
Applicant shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. Applicant recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE**

APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

37. MISCELLANEOUS PROVISIONS:

- a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the course of the Event. In addition, the Applicant will work with the City Public Affairs Division to disseminate traffic plan information to impacted residents and businesses in the Event Impact Areas, as well as schedule and facilitate a public meeting at a location near the Event Site to communicate general event and traffic plan information to the public. The logistics and date/time of the meeting shall be approved by the City, with the meeting taking place at least ninety (90) days prior to the first performance day of the Event.
- b. The use of fireworks shall comply with all applicable state laws and shall require a fireworks permit from the City fire department.
- c. Applicant acknowledges that it is solely responsible for all utilities for the Event including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.
- d. Applicant understands that City periodically amends its fee structure for events being held within the City. Applicant agrees that any additional fee structures approved by the City Commission prior to the 2023 Event will be applied and Applicant shall be responsible for the same, so long as the City gives Applicant at least six (6) months prior written notice of any such additional fees, and where such fees are excessive (as determined by Applicant in its sole discretion), Applicant shall have the right to terminate this Agreement with respect to the 2023 Event upon written notice to the City.
- e. In the Event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement and prevails in such legal action, City shall be entitled to its costs of collection, repairs, reasonable attorney's fees and costs and interest at the maximum rate allowable by law.
- f. The Applicant shall be permitted to serve alcoholic beverages as a concession of the Event, and the Applicant may extend this right to permitted third parties, in accordance with all applicable licenses, regulatory requirements and the City of Fort Lauderdale Code of Ordinances.
- g. The Applicant, after receiving permission by the City's Contract Administrator and subject to the terms of this Agreement, reserves the right to add decor, including, but not

limited to signage in and around the Event Site or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.

h. As between the parties, the Applicant, and its respective designees, after receiving permission by the City's Contract Administrator, such permission not to be unreasonably withheld, conditioned or delayed, may conduct filming anywhere at the Event Site that is part of this Agreement and as between the parties, shall retain all rights to such.

i. The Applicant will have a right to an independent audit of City's records to confirm the accuracy of the fees and expenses incurred by the City.

j. Notwithstanding anything contained herein to the contrary, any timelines set forth herein may be revised and/or determined by the City and Applicant, upon the mutual written consent of the Parties

k. Where any provision of this Agreement requires approval by or agreement with the City, the agreement or approval of [] ([email address and cell phone number]), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement with the Applicant, the agreement or approval of Bryce Hollweg (hollwegb@floridapanthers.com and 954.838.1353), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement by the Applicant, , Dean Matsuzaki, Executive Vice President, Events (dmatsuzaki@nhl.com and 347.853.4339), or Nick Gennarelli, Vice President, Events (ngennarelli@nhl.com and 917.647.3239), shall be contacted for such purpose. The City and Applicant agree that such approval may be provided via email.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY

WITNESSES:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida:

Signature

By: _____
Dean J. Trantalis, Mayor

[Witness print or type name]

Signature

By: _____
GREG CHAVARRIA
City Manager

[Witness print or type name]

ATTEST:

APPROVED AS TO FORM:
D'WAYNE M. SPENCE
Interim City Attorney

By: _____
DAVID R. SOLOMAN, City Clerk

By: _____
Patricia SaintVil-Joseph
Assistant City Attorney

APPLICANT

**FLORIDA PANTHERS HOCKEY
CLUB ENTERPRISES, INC.**, a Florida
profit corporation

WITNESSES:

Signature

[Witness print or type name]

Signature

[Witness print or type name]

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2023, by **Matthew Caldwell**, President/CEO for Florida Panthers Hockey Club Enterprises, Inc., a Florida profit corporation. He/she is personally known to me or has produced as identification.

(SEAL)

Notary Public, State of Florida
(Signature of Notary Public)

Name of Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

My Commission Expires: _____
Commission Number: _____

**EXHIBIT “A”
EVENT PERIOD**

Set Up:

Wednesday, January 25, 2023, through Wednesday, February 1, 2023 (8:00 am – 6:00 pm)

Event:

Thursday, February 2, 2023, through Saturday, February 4, 2023 (10:00 am – 10:00 pm)*

* The NHL All-Star Beach Bash presented by New Amsterdam Vodka will take place Saturday, February 4, 2023 (6:30 pm – 11:59 pm)

Breakdown of Event:

Sunday, February 5, 2023 – Thursday, February 9, 2023 (8:00 am – 6:00 pm)

Notwithstanding anything contained herein to the contrary, the Applicant, and its respective designees, employees, contractors and agents (including, the Outside Vendors), shall have 24/7 access to the Event Site during the Event Period, commencing at 8:00 am on January 25, 2023, and ending at 6:00 pm on February 9, 2023.

EXHIBIT “B”

DESCRIPTION OF EVENT SITE

Event site means collectively the area on the barrier island used to hold the event from the B Ocean extending north to SE 5th Street and A1A to the Atlantic Ocean together with a portion of Las Olas Oceanside Park.

EXHIBIT “C”
MAINTENANCE OF TRAFFIC PLAN

**EXHIBIT “D”
SITE PLAN MAP**

**EXHIBIT “E”
CREATIVE GRAPHICS**

CITY OF FORT LAUDERDALE

TEMPORARY BEACH LICENSE AND OUTDOOR EVENT AGREEMENT

THIS AGREEMENT, with and effective date of _____, 2023, is entered into by and between:

THE CITY OF FORT LAUDERDALE, a municipal corporation of the State of Florida, hereinafter referred to as “**City**”

and

FLORIDA PANTHERS HOCKEY CLUB ENTERPRISES, INC., a Florida profit corporation, hereinafter referred to as “**Applicant.**”

WHEREAS, subject to the terms and conditions contained herein, Applicant has requested approval from the City to conduct the **2023 Truly Hard Seltzer NHL All-Star Beach Festival**, or other title as determined by Applicant, which includes a beachfront music concert together with the NHL All-Star Beach Bash presented by New Amsterdam Vodka,

hereinafter referred to as the “**Event;**”

WHEREAS, in accordance with the terms hereof, Applicant shall provide the required certificates of insurance and agrees to indemnify and hold harmless the City of Fort Lauderdale for any damage to persons or property that occurs as a sole and direct result of the actions or inactions of Applicant in connection with and/or as a result of the operation of said Event as set forth herein; and

WHEREAS, City recognizes that the Event is a unique branded event requiring significant capital and time investment and, as such, is willing to entertain extensions to this Agreement to accommodate any unforeseen scheduling conflicts by Applicant during the term of this Agreement, and the City will not enter into an Agreement or approve an event permit for another event on the same date and time as Applicant’s Event, not produced by the Applicant , which is substantially similar in size, scope, magnitude, and character to the Event; and

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

1. **RECITALS AND EXHIBITS INCORPORATED.** The foregoing recitals are true and correct and incorporated herein by this reference. All attached and referenced Exhibits are also incorporated herein by this reference.

2. **DEFINITIONS.** For the purposes of this Agreement and the various covenants, conditions, terms and provisions that follow, the Definitions set forth below are assumed to be true and correct and are therefore agreed upon by the parties:
- a. “Agreement” means this Agreement between the City and Applicant, including all of the attached and referenced Exhibits, as the same may be amended in writing from time to time, with an original on file with the City Clerk.
 - b. “Applicant” means Florida Panthers Hockey Club Enterprises, Inc., a Florida for-profit corporation.
 - c. “City” means the City of Fort Lauderdale, Florida, a municipal corporation of the State of Florida, of which the City Commission is its governing body.
 - d. “Contract Administrators” means the City of Fort Lauderdale’s City Manager for the City or designee and the authorized designees of Florida Panthers Hockey Club Enterprises, Inc. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely upon instructions or determinations made by the Contract Administrators. Except as provided for in this Agreement, the Contract Administrators may not make any change to this Agreement without the approval and formal amendment to this Agreement in writing by City and Applicant.
 - e. “City Manager” means the City of Fort Lauderdale’s City Manager or his/her designee.
 - f. “Event Impact Areas” means the areas outside the Event Site that are directly impacted by the Event and because of the impact to these areas, mitigating services are provided at the sole cost of the Applicant including, without limitation, police services, emergency medical services, traffic control, crowd control and trash removal. The Event Impact Areas shall be determined by the City in consultation with Applicant and may change over time as the attendance at the event or the use of mass transit service changes. In the event of a disagreement between Applicant and the City regarding the Event Impact Areas, the City Manager’s decision shall be final as to the determined Event Impact Areas.
 - g. “Event Period” means the time periods as more fully described in **Exhibit “A”** of this Agreement.
 - h. “Event Site” means collectively the area on the barrier island used to hold the Event from the B Ocean extending north to SE 5th Street and A1A to the Atlantic Ocean, together with a portion of Las Olas Oceanside Park, as more specifically described in **Exhibit “B”** as part of the Site Plan.
 - i. “Maintenance of Traffic Plan” also referred to as MOT Plan shall have the meaning given to such term in Section 6.d of this Agreement and more specifically described in **Exhibit “C”** upon timely submission in accordance with this Agreement.

j. “Public Safety Plan” shall have the meaning given to such term in Section 6 of this Agreement.

k. “Repair” shall mean any work (including all third party labor, supplies, materials and equipment) reasonably necessary to repair, restore, or replace any equipment, building, structure or any other component of the Event Site, if such work is solely necessitated by any damage or destruction, including any damage or destruction resulting from the acts or omissions of other parties (other than the City and its agents, officers, contractors and employees), including licensees or invitees of the Applicant, related to the Event. Repairs shall also include work necessitated by damage or destruction caused by the negligence of the Applicant and/or their agents, employees, contractors or subcontractors.

l. “Site Plan” shall have the meaning given to such term in Section 8.

m. “Term” shall have the meaning given to such term in Section 4.

3. **PERMISSION TO USE.** Subject to the terms hereof, Applicant is hereby authorized and entitled to use the portions of the Event Site owned by the City during the Event Period in order to conduct the Event. The actual extent of the area to be used shall be limited by the water line and the Maintenance of Traffic (“MOT”) Plan and the approval by City of all street closures, including those streets and transportation corridors that are defined as part of the Event Site as allowed by law. It is Applicant’s sole responsibility to obtain written permission from owner(s) of any portion of the property described in the Event site that is not owned by the City. The right to use the Event Site does not imply that the Applicant is automatically allowed to close the streets and transportation corridors that are defined as part of the Event Site. Other City properties, if appropriate and mutually agreed upon in writing by the City and Applicant, may also be used for the Event. Upon request, and subject to the terms of this Agreement, the City Manager or designee shall have the right to approve or deny the use of promotional materials and advertising for the Event that contains the location, name and/or images of the Event Site, which approval shall not be unreasonably withheld. If, upon review, the City Manager or designee, acting in good faith, denies the use of certain promotional materials, the City shall identify with specificity the basis for such denial and the Applicant shall use best commercially reasonable efforts to remove the specifically restricted materials from future publication. All alcohol sales during the Event shall be governed in accordance with all applicable Florida Statutes and sections of the City of Fort Lauderdale Code of Ordinances.

Subject to and in accordance with the terms of this Agreement, Applicant shall have the sole, exclusive and unrestricted right, without any approval or consent from the City, to conduct the following activities (collectively, the “**Event Activities**”) at the Event Site during the Event Period, whether directly by Applicant or indirectly through the hiring of third-parties: (i) retail and merchandise services, including the sale of the merchandise; (ii) product serving, display and sampling, including food and beverage sampling by Applicant’s Partners (as defined below) and giveaways; (iii) traditional and interactive entertainment services, including live and recorded music; (iv) temporary advertising, promotion and sponsorship activities, including vehicle displays; (v) photographic, audio, visual and/or audiovisual recordings; and (vi) such other

activities in connection with the Event as Applicant shall determine in its sole discretion, subject to the terms of this Agreement. The beginning and ending times, setup and location of each of the foregoing shall be determined by Applicant in its sole discretion. As between the City, Applicant, Applicant shall retain one hundred percent (100%) of any and all revenue received in connection with the Event.

Applicant has various corporate marketing and other commercial agreements with third-parties that grant such third-parties various rights (exclusive and otherwise) for and in connection with the National Hockey League and its events and initiatives, including without limitation, the Event (each, an “**Applicant Partner**” and collectively, the “**Applicant Partners**”). Applicant will have the sole, exclusive and unrestricted right, without any approval or consent from the City, to sell advertising, sponsorship and other associated rights relating to the Event, including, without limitation, the Event title and presenting sponsorships, Event Activities and all forms of advertising, branding and other activation in, on and around the Event Site, during the License Period. In connection with the foregoing, Applicant’s right to sell advertising, sponsorship and other associated rights relating to the Event and Event Activities (and to announce the same) will be notwithstanding any other existing advertising, sponsorship or other third-party relationships in, on, around or otherwise related to the Event Site, or to any other obligations to which the City may be subject. The City shall not engage in any act or omission in connection with the Event which would interfere with, disturb or otherwise limit Applicant’s ability to fulfill its obligations to the Applicant’s Partners. Applicant shall control the design and printing of all Event-related signage for the Event, including, but not limited to, Event directional signage. Applicant agrees any and all speech displayed on any promotional or marketing material at the Event Activities, ~~whether~~ prepared or designed by Applicant or any of Applicant’s Partners under Applicant’s control, shall be content-neutral and shall not be ~~offensive~~, obscene, defamatory or discriminatory in nature.

4. **TERM:**

The Term of this Agreement shall commence on the effective date upon execution of this Agreement by all Parties and shall expire on February 9, 2023.

5. **TEMPORARY BEACH LICENSE GENERAL TERMS.**

a. The terms and conditions outlined in Sections 8-54 and 8-55 of the Code of Ordinances of the City of Fort Lauderdale, shall be incorporated into this Agreement as if fully stated herein.

b. The Applicant agrees to pay \$500.00 per day for each Event use of the beach.

6. **PUBLIC SAFETY PLAN FOR THE EVENT.** Because of the physical size of the Event and the number of people that may attend, City shall arrange for, in consultation with Applicant, all necessary personnel to provide public safety at the Event Site and Event Impact Areas. The parties will consult with each other in regard to the levels of security including the scaling down of such services for the set up and breakdown of the Event. City reserves the right to require, in good faith, and in consultation with Applicant, that additional services be provided, at the sole cost to Applicant, to ensure the appropriate level

of public safety and other City services, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. These services shall include, without limitation, crowd control, traffic management, fire rescue, ocean rescue, emergency medical services, and police services. Applicant is required to provide signage, traffic barricades, and cones to facilitate public safety and will set up and remove same at no cost to the City.

a. The Applicant, shall provide a Public Safety Plan to City no later than ninety (90) days prior to the date of the Event. This plan shall include, but not be limited to, the Applicant's planned actions to respond to and mitigate various potential criminal and emergency incidents which may occur during the Event. After receiving the final private security and Event Public Safety Plan from the Applicant, the City shall work with the Applicant in order to properly determine the number of personnel necessary to effectively and efficiently carry out the Public Safety Plan. City shall develop an anticipated budget for the Public Safety Plan and other City services, and provide the anticipated budget to the Applicant not more than ten (10) days following receipt of the Public Safety Plan. In the event of a disagreement between Applicant and the City regarding the number of personnel required for the Public Safety Plan and the anticipated budget of the Public Safety Plan, the City Manager shall seek to resolve such disagreement by taking into account the best interest of the public's safety and the reasonable cost for implementing the Public Safety Plan. The City Manager's decision shall be final as to the appropriate level of staffing for the Public Safety Plan and the anticipated budget for the Public Safety Plan. City agrees to include in its anticipated budget to the Applicant the number of proposed on-site City personnel that will be assigned during the Event as allowed by Florida Statute. Due to the sensitive security and safety implications, including related input and responsive staffing plans provided by the City, the Public Safety Plan shall not be available for public or media distribution, except where disclosure is required by law.

b. The parties will act in good faith to keep the other party notified of the latest information and any new developments or incidents that might cause additional public safety personnel to be deployed to the Event. Both parties agree that an essential element of the Event's Public Safety Plan includes a procedure, mutually agreed upon in advance; that the Applicant, or its respective designees must follow during the Event to record the number of participants within the Event Site at any given time. Participant numbers must be real time and verifiable by City public safety personnel. In the event the primary participant count process fails during the Event, the Applicant, or its respective designees must have a contingency process in place and readily available for activation to ensure accurate continuation of participant counts. This contingency procedure along with the initial participant verification procedure shall be included and approved by the City in advance and as part of the Public Safety Plan. The City's Contract Administrator, City Police or Fire personnel shall have the right to request participant numbers from the Applicant at any time throughout the course of the Event.

c. In addition to the Applicant's Public Safety Plan, the City's Police and Fire Departments will author separate comprehensive Incident Action/Operational Plans specific to their duties. Such plans will take into consideration several factors, to include

nationally accepted event planning and management guidelines utilizing the National Incident Management System (NIMS) and the Incident Command System (ICS). These plans will be fluid up until the conclusion of the event and may change based on real time intelligence, threat information, and other relevant input. Local representatives and agents from the Federal Bureau of Investigation (FBI) Special Events Unit, the Department of Homeland Security (DHS), Navy Criminal Investigative Service (NCIS), and other public safety partners will assist in determining the level and magnitude rating of this event, advise of any potential national security considerations and provide intelligence gathering and event threat assessment assistance. Due to the sensitive security and safety implications of such plans, they will be kept confidential, accessible to City officials and Police/Fire personnel only and shall not be available for public or media distribution.

d. Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City a MOT Plan, incorporated into this Agreement and marked as Exhibit "C". The MOT shall contain a construction automotive and pedestrian traffic flow schedule detailing the opening and closing times for all streets, lanes, pedestrian walkways and traffic corridors and outlining the use of any and all variable message signs for the City's review and approval. No additional street, lane or traffic corridor closures will be permitted unless included in an updated MOT Plan and approved by the City. Applicant agrees to provide the City with emergency access to all areas included in the Event Site to ensure the safety and welfare of the community.

e. The cost for any additional services or expansion of services requested by Applicant, in writing (email is sufficient), shall be an expense to Applicant and City shall be paid for all costs and expenses in association with any such addition or expansion of services provided to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. Expansion of services means enhancements of activities, any changes in the type of activities provided or changes in parameters of Event or the Event Site, caused by or requested by Applicant, including physical location and boundaries that result in an increase in the City's cost to provide all necessary services.

f. Should Applicant request non-critical public safety services, such as a police escort, or if such services are beyond the City's ability to provide, Applicant may make such arrangements and coordinate these services with the City. The cost for these additional services shall be an expense to Applicant, and all such costs and expenses shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses.

g. In the event of an emergency or disaster during the Event, at the Event Site or as a direct result from the Event activities, that requires public safety resources beyond the original Public Safety Plan, it shall be the responsibility of the Applicant to reimburse the City's reasonable, actual and documented additional cost to respond to such emergency or disaster that the City would not have otherwise incurred had such Event not been taking place. This section shall not apply to any natural disaster, act of terrorism, or act of God that may occur at the Event Site during the Event including, without limitation, a hurricane,

lightning strike, tornado or any other such causes whatsoever beyond the control of the parties and unrelated to the Event.

h. Applicant acknowledges that traffic control plans shall accommodate the ingress and egress to residences during the course of the Event.

i. If the Event includes use of fireworks, Applicant shall obtain a fireworks permit from the City's Fire Department no less than ten (10) days prior to the Event. The Applicant shall comply with all applicable state laws and regulations regarding the use of fireworks.

7. **STREET CLOSINGS.** The City reserves the right to approve all street closings, including those streets and transportation corridors that are defined as part of the Event Site, in association with the Event and any requests for street closings should be included with the MOT Plan that is submitted by Applicant and any updated MOT Plan. Applicant agrees to coordinate and make the appropriate arrangements with any merchants or residents affected by any street closures to ensure they are provided sufficient and reasonable access to their businesses and residences.

8. **SITE PLAN.** Not less than ninety (90) days prior to the date of the Event, Applicant shall provide to the City the following:

a. For the Event Site and Event Impact Areas, a detailed Site Plan for the Event showing locations that will be designated for Applicant's, and its respective designees' exclusive use, detailing the locations of any tents, sanitary facilities, parking, stages, booths, concessions, alcoholic beverage service areas, and other such services together with the boundary lines, including those down to the waterline as allowed by law, of any fences, barriers etc. to be constructed at the Event Site, and the times when such borders, fences and/or facilities will be constructed, operated and dismantled. Such Site Plan shall be subject to the review and approval by the appropriate City departments, such approval not to be unreasonably withheld or delayed. Any additional changes made to the Site Plan by Applicant, after reviewed by the appropriate City departments, must be approved by the City, which such approval will not be unreasonably withheld or delayed. A final inspection will be conducted by the City immediately prior to the Event to ensure that the location of all tents, booths, sanitary facilities, stages, etc. are in accordance with the City approved site plan and code regulations. The Site Plan shall be incorporated into this Agreement and marked as **Exhibit "D."**

b. A description of all activities and events to occur at the Event Site and Event Impact Areas including permissible activities and any maintenance of the waterline fence, barrier and borders during the Event.

c. The cellular and business phone numbers of the individuals in charge of the various aspects of the Event.

d. Copies of all applicable permits and licenses required by the City's Sustainable Development Department and Fire Department. These permits include, but are not limited

to, permits necessary for tents, merchandise, food and beverage vendors, electrical connections, fireworks, Florida Department of Environmental Protection (FDEP) permits, and other County or State permits.

9. **NON-PUBLIC SAFETY SERVICES.** City shall provide, as necessary, oversight, coordination and direction, but not supervision, of Applicant's, and its respective employees or contractors related to Event transportation, setup, storage, maintenance, Repair or replacement of property, cleanup and breakdown of Event Site including removal of barricades and safety cones. Applicant shall remain an independent entity at all times.

10. **MAINTENANCE OF EVENT SITE AND EVENT IMPACT AREAS.**

a. Applicant shall be responsible for and shall provide sufficient temporary public sanitary facilities which shall be of the type and in sufficient number as to meet the requirements established by the Department of Sustainable Development. Applicant shall provide daily service of the facilities at all times during the Event Period. The cost of such temporary public sanitary facilities shall be an expense to Applicant and all costs and expenses for facilities furnished by the City to Applicant shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Cost and Expenses.

b. Applicant shall be responsible for all cleanup costs and expenses associated with the removal of trash and debris that accumulates on any portion of Event Site or in the designated Event Impact Areas. All trash shall be collected and removed throughout the Event with final cleanup being completed within 24 hours of the Event completion or take-down of the Event, or within established time frames as agreed to by City. The requirement to remove trash and debris includes street sweeping. Applicant will reimburse City for all actual and documented costs associated with trash and debris removal within the Event Site and Event Impact Areas.

c. In the event the Applicant wishes to utilize temporary mobile cellular communication (service boosting) towers, which can also benefit public safety by increasing the E-911 capabilities of the specific service provider, the Applicant must notify the City Police and Fire Departments and agrees that the contracted equipment provider with whom they procure such equipment, services etc. will work closely with the City Radio Engineers to confirm the temporary towers will not interfere with the City or County public safety radio frequencies.

d. Applicant shall be responsible for the clean-up of all temporary flooring which supports tour buses and equipment.

11. **PARKING AND TRANSIT SERVICES.** It will be the responsibility of Applicant to arrange and coordinate all parking at City facilities and any transit services from these facilities to the Event Site. All proposed shuttle routes and bus stops shall be approved by the City as part of the MOT Plan and any updated MOT Plan. City agrees to invoice Applicant at the approved special event parking rate of \$30 dollars per space per day to use the Fort Lauderdale Beach Park Parking Lot during the Event Period and any other public metered parking spaces that are removed

from public use as requested by the Applicant and approved by the City. All parking lot requests must be in writing at thirty (30) days in advance of the Event. An estimate of parking charges will be provided to Applicant no more than seven (7) days after receiving written requests. Applicant understands that the approved special event parking rate is a daily rate and may not be prorated. Requests to change an issued City parking invoice must be made in writing prior to the end of the Event. Applicant agrees to reimburse the City, for any loss of parking property from any City parking facilities within the Event Site that occurred during the Event, whether such loss is the result of theft or vandalism, including but not limited to parking meter machine, meter bags and parking signs, to an amount equal to the actual and documented cost of repair or replacement of the item.

12. CONSTRUCTION OF FACILITIES, STRUCTURES, CANOPIES, TENTS AND CONCESSION STANDS.

a. Applicant, and/or its respective designees shall be allowed to construct and maintain on the Event Site, such facilities and structures that are necessary for the Event including, but not limited to, fences, barriers and grandstands and signs as approved by the City and at such locations as approved by the City, such approvals not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement.

b. All such structures, facilities, concession stands and canopies may be erected and deliveries related thereto may begin at the Event Site on the date specified in Exhibit A. All such structures must be removed by the specified take-down date set forth in Exhibit A. Except where such structures, facilities, concession stands, canopies and tents are permitted by this Agreement, the same shall not otherwise interfere with the normal operations of the property. Any setup or breakdown of such structures at the Event Site shall be in accordance with the terms contained in the City's Noise Ordinance, Chapter 17 of the City of Fort Lauderdale Code of Ordinances, as amended.

c. Applicant is hereby granted permission to erect canopies, tents, and concession stands, at such locations in accordance with the approved Site Plan. It is further agreed and specifically understood that permission to erect such canopies, tents and concession stands, as aforementioned is conditioned upon Applicant complying with the following:

- (i) Within ten (10) days of the Event Period, Applicant shall file with the City Manager a detailed Concession Plan specifying the locations, hours, dates and types of concessions that will operate during the Event. The Concession Plan shall identify and list the individuals, corporations, partnerships or other entities that are or will be operating such concessions, tents or canopies at the Event Site. Any and all third-party vendors with which Applicant contracts for the sale or distribution of alcohol shall submit a copy of the vendor's liquor liability license at this time. Sponsors of events at which food or beverages will be sold or distributed shall meet all applicable state, county and city health codes. This shall be evidenced by a permit by the appropriate entity.

- (ii) Current flameproof certificates must be provided for all canvas tents, awnings or canopies and shall be submitted for approval to the city fire departments. Applicant shall obtain approval by the City Fire Department and file with its application evidence that such canopies, tents, awnings and/or concession stands which are to be used during the period of time encompassed by this Agreement are of fireproof material and will not constitute a fire hazard. City's Sustainable Development Department shall review and approve the proposed use of any temporary structure used in association with the Event in accordance with the standard criteria as outlined in the City's Code of Ordinances and Florida Building Code.

d. All construction, installations and services, including electrical hook-ups, shall be made at Applicant's expense and approved in advance by the City's Sustainable Development Department, such approval not to be unreasonably withheld, conditioned or delayed, and otherwise in accordance with the terms and conditions of this Agreement. If electricity is required, Applicant, and/or its respective designees shall negotiate arrangements for such service with the City or a licensed contractor. This cost shall be an expense to Applicant and, if furnished by City, shall be paid to City within the time frame as set forth in Section 23, Reimbursement of Costs and Expenses. The Department of Sustainable Development shall conduct electrical inspections of all electrical facilities whether power is supplied by local utilities or is self-provided by generator systems. The Applicant shall permit the City staff to conduct electrical inspections of all electrical facilities.

e. Unless Applicant receives prior specific written permission by the City Manager, no construction or installations shall involve the use of stakes or other material that may break the surface or deface any infrastructure such as asphalt, concrete, brick or any plant material.

f. City will provide Applicant with a list of all City staff members who are required to work at the Event at least ten (10) days prior to the Event. Applicant shall provide City with an "all-access" Event pass for each City staff member identified on the City's list, subject to Applicant's internal policies, and Applicant shall deliver to the City all requested all-access Event passes no later than five (5) days prior to the Event. City shall be responsible for the negligent or wrongful acts and omissions of all City agents, officers, contractors and employees while acting within the scope of the employee's office or employment, subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. Additionally, Applicant shall provide an operations tent to be utilized by the City of Fort Lauderdale during the Event days. Location of this operations tent shall be determined by the City.

13. **USE OF EVENT SITE AND PAYMENT FOR DAMAGE TO CITY PROPERTY.**

a. Applicant will exercise reasonable care in its use of the Event Site and Event Impact Areas. If such areas are damaged beyond normal wear and tear by the negligent

acts or wrongful conduct of the Applicant, or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees, Applicant will reimburse the City an amount equal to the actual and documented costs of Repair, subject to the provisions of this section.

No more than five (5) days prior to the Event, City, and Applicant shall inspect and document the condition of the Event Site and Event Impact Areas. It shall be the responsibility of the Applicant during the initial walk-through inspection to point out to the City the areas of disrepair or pre-existing conditions reasonably visible to Applicant upon a cursory inspection and walk-through. Prior to the end of the Event, City, and Applicant shall inspect the condition of the Event Site and Event Impact Areas and City shall inform Applicant of all necessary Repairs. Applicant shall make all necessary Repairs to restore the Event Site and Event Impact Areas to a condition equal to that existing prior to the Event.

b. Applicant agrees to Repair all core drilling holes in the asphalt, concrete, and all other paved and unpaved surfaces, made to facilitate the erection of barriers, stages, fences, tents and other improvements to the Event Site and Event Impact Areas, according to City standards, as determined by the City Manager in his sole discretion, within seventy-two (72) hours after the conclusion of the Event.

c. Applicant shall be responsible for damage to all plants, shrubs, trees, other landscaped areas, paved surfaces, and to any and all structures located or situated upon any portion of the Event Site or Event Impact Areas. Applicant shall be responsible for the costs to Repair any part of the Event Site or Event Impact areas that are damaged during the Event Period as a result of the negligence and/or wrongful acts of Applicant or Applicant's agents, employees, contractors, subcontractors, invitees, licensees, or attendees. Applicant shall be responsible, at Applicant's sole expense, for the repair or loss of its officers', contractors', subcontractors', and agents' personal property, except for repairs or losses of such property caused by the negligence or willful misconduct of the City or its officers, contractors, employees or agents.

d. It is further agreed that if damage is found to exist, as a result of the Applicant's or its agents, employees, contractors, subcontractors, invitees, licensees, or attendees' negligence during the Event Period, City shall furnish Applicant with a written report of such damage by the close of business on the Tuesday following the Breakdown of Event. The report shall estimate the cost to remedy such damage. If Applicant arranges for such damages to be repaired by or on behalf of City, such cost shall be paid by Applicant to City within fourteen (14) days after Applicant receives the City's invoice of the cost of said damage.

14. **SECURITY OF APPLICANT'S PROPERTY.** All construction materials, equipment, goods, signs and any other personal property of Applicant shall be protected solely by Applicant. Applicant acknowledges and agrees that City assumes no responsibility or liability, whatsoever, for any such item and that the security and protection of any such item from theft, vandalism, the elements, acts of God, or any other cause, are strictly the responsibility of Applicant, unless caused

by the wrongful or negligent acts of the City or its officers, contractors, employees or agents.

15. **APPLICANT'S CONTRACTS.** Applicant agrees to be solely responsible for all contracts or agreements of any nature including, without limitation, those for entertainment and vendors for the Event. All contracts for the Event shall be negotiated by Applicant, and/or its respective designees and secured at the sole expense of Applicant, and/or its respective designees, respectively. City shall not be named as a party in any contract for the Event and City shall have no obligation to ensure payment to any individual or entity for goods and/or services provided in conjunction with such Event. No employment relationship exists between City and Applicant.

16. **SUBLEASES, ASSIGNMENTS, OR TRANSFERS.** Applicant or any of the principals of the corporation shall not assign, sublease or transfer any of its obligations and/or rights under this Agreement, in whole or in part, to any person, business or entity, without the prior written approval of City, such approval not to be unreasonably withheld or denied. Any action by Applicant in contravention of this Section 16 will result in immediate cancellation and termination of this Agreement by City.

17. **LICENSES AND PERMITS; COPYRIGHTS, PATENTS AND TRADEMARKS.** Applicant agrees to secure and pay for all licenses and permits required by any governmental agency having jurisdiction over the Event Site for any dispensing, serving, sale and/or distribution of the appropriate governmental agency. Additionally, if Applicant intends to use any item which is or may be protected from infringement, such as but without limitation, copyrights, patents and trademarks, if requested by City, Applicant shall provide City ten (10) days in advance of the first date of property use, evidence showing that the applicable licenses, permits and/or permission have been secured and, if applicable, that all fees have been paid in full by Applicant. The provisions of this paragraph specifically apply to the American Society of Composers, Authors and Publishers ("ASCAP"), Broadcast Music Incorporated ("BMI") and any other similar organization that may require written permission and payment of a fee for use of protected music material. Applicant shall ensure that all performance payments required to be made under such licenses are made promptly and directly to the licensing organizations. Copies of all said licenses or reports shall be submitted to City upon request, as permitted by law. In the event Applicant fails to submit the licenses or reports as required herein or the documentation is not satisfactory to City, Applicant shall be responsible for payment to City for all license fees incurred by the City in connection with the Event. City shall have no responsibilities to any performing rights licensing organizations for any performance during the Event.

18. **STANDARDS OF CONDUCT; COMPLIANCE WITH RULES, REGULATIONS, ORDINANCES.** Applicant agrees that at all times it will conduct its activities with full regard for public safety and will observe and abide by all applicable federal, state and local laws, the federal and state constitutions, and all rules, regulations and ordinances of City and any other governmental agency having jurisdiction including, without limitation, those relating to noise, building, zoning, gambling, fire protection, liquor regulation, sanitation and food facilities and hours of operation, in connection with its obligations under this Agreement. Applicant shall further take all precautions and use due care to conduct its operations in a safe and prudent manner with respect to its agents, employees and visitors to the Event. The City agrees that it and its employees, contractors, officers and agents will observe and abide by all applicable federal, state

and local laws and the federal and state constitutions in the performance of all work and services to be provided under this Agreement.

19. **INSURANCE.** As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement, the Applicant, at the Applicant's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Applicant. The Applicant shall provide the City a certificate of insurance evidencing such coverage. The Applicant's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Applicant shall not be interpreted as limiting the Applicant's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Applicant for assessing the extent or determining appropriate types and limits of coverage to protect the Applicant against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Applicant under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$10,000,000 each occurrence and \$10,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$10,000,000 each occurrence and \$10,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors which shall include coverage for pyrotechnics.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Applicant. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Liquor Liability

If Applicant engages in the sale and/or distribution of alcohol, Applicant shall provide evidence of coverage for liquor liability in an amount not less than \$1,000,000 per occurrence. If the Commercial General Liability policy covers liquor liability (e.g. host or other coverage), the

Applicant shall provide written documentation to confirm that coverage already applies to this Agreement.

If Applicant contracts with a third party vendor for the sale and/or distribution of alcohol, Applicant agrees to cause any and all third party vendors to obtain, pay for and keep in force continuously during the event, liquor liability insurance in an amount not less than \$1,000,000.00 per occurrence. Applicant is required to confirm, in writing, that each vendor of the Applicant carries insurance coverages and limits that meet or exceed the conditions set forth in this Agreement.

Active Shooter Insurance

Applicant shall ensure that there are no exclusions in its liability insurance policy for liability associated with an Active Shooter event.

Business Automobile Liability

Coverage must be afforded for all Owned, Hired, Scheduled, and Non-Owned vehicles for Bodily Injury and Property Damage in an amount not less than \$1,000,000 combined single limit each accident.

If the Applicant does not own vehicles, the Applicant shall maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Watercraft Liability – Not applicable.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes. Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute.

The Applicant waives, and the Applicant shall ensure that the Applicant's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Applicant must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Applicant shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of the Event Period contemplated in this Agreement.
- b. The Applicant shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of

- premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Applicant to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.
 - d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Applicant shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
 - e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial contract or prior.
 - f. The City shall be named as an Additional Insured on all applicable liability policies, with the exception of Workers' Compensation.
 - g. The City shall be granted a Waiver of Subrogation on the Applicant's Workers' Compensation insurance policy.
 - h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Applicant has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Applicant's expense.

If the Applicant's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Applicant may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Applicant's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Applicant that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the end of the Event Period, or until this

Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Applicant must provide to the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Applicant's insurance policies.

The Applicant shall provide notice of any and all claims, accidents, and any other occurrences associated with the Event to the Applicant's insurance company or companies and the City's Risk Management office, as soon as practical.

It is the Applicant's responsibility to ensure that any and all of the Applicant's independent contractors and subcontractors ~~comply with these~~ maintain commercially reasonable types and amounts of insurance ~~requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Applicant.~~

20. INDEMNIFICATION AND HOLD HARMLESS. Except in cases of City, its agents, officers, contractors and/or employees negligence or willful misconduct, Applicant agrees to indemnify, defend and hold harmless City, its officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from the use of the Event or caused by, in connection with, arising out of, or resulting from any act or omission by Applicant, its partners, employees, officers and agents done in the performance of this Agreement. If a party is called upon by the other party, such party shall defend not only itself, but also the other party in connection with any such claim at the indemnifying party's expense, provided that the indemnified party shall reasonably participate, at the indemnifying party's expense. Applicant further agrees to defend, indemnify, save and hold harmless the City and the City's officers, agents and employees from any third-party claim, suit, loss, cost or expense or any damages arising out of or relating to Applicant's failure to obtain all necessary performing rights and licenses for the Event (BMI, ASCAP, etc.). City shall be liable for damages or injuries caused by the City's and its agents, officers, contractors and employees' negligence or willful misconduct, as determined by a court of competent jurisdiction in the State of Florida. The foregoing sentence shall not serve as a waiver of the City's sovereign immunity or of any other legal defense available to the City and shall be subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised.

Except in cases of Applicant, its agents, officers, contractors and/or employees negligence or willful misconduct, the City agrees to indemnify, defend and hold harmless the Applicant, its affiliates and its respective officers, agents and employees, against any and all third-party damages, claims, losses, liabilities and expenses including claims and losses of bodily injury, property damage, illness and/or sickness (including, without limitation, reasonable legal fees and disbursements) caused by, in connection with, arising out of, or resulting from any negligent or wrongful act or omission by the City, its agents, officers, contractors and/or employees done in the performance of this Agreement while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as

amended or revised. This Section shall survive any early cancellation or termination of this Agreement.

21. LIMITATION OF LIABILITY.

- a. The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement or for any action or claim arising from this Agreement, so that its liability for any such breach or claim or action never exceeds the sum of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. Applicant hereby expresses its willingness to enter into this Agreement with Applicant's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of the City's sovereign immunity under Section 768.28, Florida Statutes, as amended or revised. This Section shall survive any cancellation or early termination clause.
- b. Accordingly, and notwithstanding any other term or condition of this Agreement, Applicant hereby agrees that the City shall not be liable to Applicant for damages in an amount in excess of \$ the City's sovereign immunity Section 768.28, Florida Statutes, as amended or revised, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Article 768.28, Florida Statutes, as amended. This Section shall survive any cancellation or early termination clause.
- c. The limitation of liability set forth in this section shall not apply to City's indemnification obligations hereunder, claims involving fraud or intentional misconduct of the City or its agents, officers, contractors or employees, or for damages or injuries caused by the City or its agents, officers, contractors or employees' negligence or wrongful misconduct while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised, as determined by a court of competent jurisdiction in the State of Florida as referenced in Section 20 above.

22. COSTS AND EXPENSES FOR CITY SERVICES.

- a. As provided for in Section 6 above, Applicant shall plan and provide and coordinate with City personnel to implement the Public Safety Plan. Applicant agrees to reimburse the City for all actual and documented out-of-pocket costs and expenses incurred by the City for services provided for the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property, and staff time incurred as a result of the Event; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such costs and expenses, which said approval shall not be unreasonably withheld or delayed prior to the Event. The police department may require the Applicant to provide and pay for security personnel for crowd control and traffic direction purposes, which security services would be deemed a part of

this Agreement and not require a separate agreement between Applicant and the City. The fire department may require the applicant to provide and pay for EMS and fire watch personnel or both, which EMS and fire services would be deemed a part of this Agreement and not require a separate agreement between Applicant and the City. Police, fire and EMS costs are exempt from prior notice provisions. Applicant agrees and understands that the off duty rate for police personnel for all special events is calculated at a three (3) hour minimum rate. There is a 24 hour cancellation requirement to avoid the three (3) hour minimum payment per officer. All payments will be paid within two (2) weeks of the payroll being submitted and receipt of an undisputed invoice from the City. Applicant agrees to work in good faith with the City and local police regarding ~~that~~ positions for all security and supplemental police details for the Event should first be offered to City personnel at the detail rate. If an insufficient number of personnel are available at the detail rate, Applicant shall have the option to utilize outside Florida sworn agencies to fill the deficiency prior to the City mandating personnel to work at the overtime rate, with this request made through and coordinated by the City Police and/or Fire Rescue Departments. The Fort Lauderdale Police Department and Fire Department shall retain the command and control of their respective event operation areas at all times and any mutual aid or assisting agency personnel shall follow such command procedures. Applicant further agrees to be responsible for any capital improvements that the City must make to accommodate Applicant's request for any building, electrical, plumbing, fire, municipal, or county code requirements; provided, however, that Applicant shall not be charged for any of the foregoing unless Applicant has provided prior written approval (email is sufficient) of any such capital improvements, including the costs associated therewith, which said approval shall not be unreasonably withheld or delayed prior to the Event. Applicant shall also be responsible for any replacement and restoration costs as set forth in this Agreement.

b. Applicant agrees to secure a bond, or alternatively, send payment via wire transfer in an amount equal to one hundred and ten percent (110%) of the estimated cost of reimbursement for City services, ~~in no event to exceed the amount of [\$ _____]~~ (the "Deposit"), to cover all costs and expenses associated with hosting the Event including, without limitation, public safety, maintenance, cleanup, utility connections, breakdown and removal, storage and Repair or replacement of property. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. City reserves the right to approve the bonding company or institution issuing the bond and the instrument shall be kept in full force and effect for the period of the Agreement. No later than thirty (30) days prior to the date of permission from City to first use the Event Site, Applicant shall provide the City with a valid payment bond in the amount specified above. The bond shall be written by a corporate surety company holding a Certificate of Authority from the Secretary of Treasury of the United States, executed and issued by a resident agent licensed by and having an office in the State of Florida, representing such corporate surety, providing that if Applicant fails to duly pay for any labor, materials, or other supplies used by Applicant, the surety will pay the same in the amount not exceeding the sum provided in such bond. Applicant shall also have the option to escrow the funds in an amount equal to one hundred and ten percent (110%) of the cost

of reimbursement for City services (“Obligated Amount”) in which case a bond would not be required by the City. The Obligated Amount shall be placed into the City of Fort Lauderdale Escrow Account to be held in escrow under the terms and conditions hereinafter set forth (“Escrow Deposit”). The City acknowledges and agrees that in the event Applicant pays the Deposit via a wire transfer, that no bond or escrow would be required by the City under this Agreement.

c. In the event the Applicant elects to deposit the Obligated Amount with the City of Fort Lauderdale Treasurer, who shall be the Escrow Agent, the Escrow Agent shall promptly deposit, retain and disburse the Escrow Deposit in accordance with the terms hereof or as may be directed in writing by both the Applicant and City Manager on behalf of the City or as may be directed by a court of competent jurisdiction.

d. If the Escrow Agent is in doubt as to his or her duties, the Escrow Agent shall retain the Escrow Deposit until Applicant and City, through its City Manager, collectively agree in writing to the disposition of the funds or until a court of competent jurisdiction has adjudicated the rights of Applicant and the City.

e. Any suit between Applicant and City where Escrow Agent is made a party because of acting as Escrow Agent, or in any suit where Escrow Agent interpleads the Escrow Deposit, Escrow Agent shall recover reasonable attorney’s fees and costs from the Escrow Deposit, as between Applicant and City, and such fees and costs shall be charged and assessed against the non-prevailing party.

f. The parties agree that the Escrow Agent shall not be liable to any party or person for misdelivery of the Escrow Deposit or any portion thereof to Applicant or City, unless misdelivery is due to willful breach of the terms hereof or gross negligence on the part of Escrow Agent.

g. The escrow deposit will be held until all effected departments have submitted their final invoice for the reimbursement of City services including without limitation Public Safety Services. Once the final invoice has been received, the Applicant will be notified for approval. Once approved, the release of escrowed funds earmarked for police services will be wired back to the Applicant’s bank account. The Applicant shall release checks to police personnel for payment of off-duty details at the Event within three (3) business days of receiving the escrowed funds.

23. REIMBURSEMENT OF COSTS AND EXPENSES.

a. Subject to the terms hereof, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder within fourteen (14) days of receipt of an undisputed invoice from City. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the conclusion of the Event. If total amount of any undisputed sums are not paid within

fourteen (14) days of invoice receipt, interest charges of four percent (4%) annual percentage rate shall be applied.

b. Should Applicant disagree with the invoice provided by the City, it shall state its reason(s) in writing and may request the City Manager to review the charges and render a decision. If Applicant does not agree with the City Manager's decision, Applicant may make a petition to the City Commission. If Applicant does not agree with the results of such review, upon the filing of a lawsuit the parties shall agree to mandatory mediation.

24. **AUTHORITY OF CITY MANAGER.** Applicant shall coordinate the use of Event Site in accordance with the terms hereof and the approved Site Plan, in consultation with the City Manager. The City Manager shall notify Applicant when, in the City Manager's reasonable opinion, such activities may be or are detrimental to the public or to the City, or if the City has reason to believe that Applicant, its agents, subcontractors, independent contractors and/or employees have violated any law, rule or ordinance. After consultation with Applicant, City reserves the right to eject or cause to be ejected from the Event Site any person or persons causing a disturbance and neither the City nor any of its officers, agents or employees shall be liable to Applicant for any damages that may be sustained by Applicant through the exercise by City of such right, unless due to the fraudulent, bad faith, negligent or wrongful acts or omissions of the City or its officers, agents, contractors or employees in connection with the foregoing while acting within the scope of the employee's office or employment, and subject to the limitations contained in Section 768.28, Florida Statutes, as amended or revised. The decision of the City Manager in such regard shall be final and binding.

25. **TERMINATION:**

a. This Agreement may be terminated as follows:

i. Upon the mutual written agreement of the parties.

ii. Applicant may elect, during the Term of this Agreement, to terminate this Agreement and no longer conduct the Event without penalty. If Applicant elects to terminate this Agreement, Applicant shall notify the City in writing of such election one hundred and twenty (120) days prior to the date of the Event. Applicant shall be obligated to reimburse City for any costs and expenses incurred by the City in connection with the fulfillment of the City's obligations under this Agreement prior to such termination. It is expressly understood that City may seek to terminate this Agreement if the City decides, in its reasonable, good faith discretion, it is necessary to protect the public's health, safety and welfare. City may also seek to terminate this Agreement upon the material breach by the Applicant of its obligations under this Agreement. If the City seeks to terminate this Agreement, the City shall provide notice of the reason for termination as set forth in the Notice section of this Agreement, and the Applicant shall have seventy-two (72) hours to cure the reason for the termination to the exclusive satisfaction of the City, acting reasonably. In the event of an

imminent threat to the public's health or safety, the City may terminate this Agreement at any time by providing notice as set forth in the Notice section of this Agreement. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties may reasonably mitigate such threat, unless immediate action is required given the circumstances.

- iii. By a party upon the Default of the other party, without limitation of any other available rights or remedies available to such party at law or in equity. "Default" means, after expiration of the applicable notice and cure periods, the failure of a party to comply with or perform any material term, condition, or covenant contained herein which continues for more than thirty (30) business days after the defaulting party's receipt of written notice thereof (or in the event of an allegation of material breach or default not reasonably curable within thirty business days of such notice, if the defaulting party has not begun using diligent efforts to cure such alleged breach or default within such period). If the alleged breach occurs within thirty (30) business days of the start of the Event Period, the cure period may be reasonably reduced given the circumstances and the imminency of the Event, as set forth in such notice.
- iv. In addition to the termination rights set forth above, the City may seek to temporarily suspend or cancel an Event if the City determines, in its reasonable, good faith discretion, that an imminent and legitimate threat or risk to the public's health, safety and welfare exists. Prior to exercising such right, the City will use best efforts to consult with Applicant on a meaningful basis to determine if the parties are reasonably able to mitigate such threat or risk, unless immediate action is required given the circumstances. The City's exercise of the right set forth in this paragraph shall not result in a termination of the Agreement as to any remaining Events, unless otherwise agreed in writing by the parties.

In the event of a termination of this Agreement under this Section 25, Applicant shall pay City for all actual and documented costs and expenses incurred by City for which Applicant is responsible hereunder up to and including the effective date of termination. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following the effective date of termination.

26. **BREACH.** A material, monetary, breach of this Agreement by the Applicant shall be grounds for the City to terminate this Agreement, except that before such termination, the Applicant shall be entitled to thirty (30) days written notice and an opportunity to cure the breach within such period. Notice of any breach may be sent by electronic mail, followed by hand delivery of the notice as provided in Section 32 of this Agreement.

27. **FORCE MAJEURE.** In the event the Event Site shall, at any time during the term of this Agreement, be destroyed or rendered unusable by fire, storm or threat of a named storm within

five hundred (500) miles of the Event Site, act of terrorism, war, act of God or other disaster or epidemic, act or failure to act of any governmental or regulatory body (whether civil or military, domestic or foreign) or governmental regulation imposed after the fact (collectively or separately, "Force Majeure Event"), or the Event is cancelled or postponed, including, due to a Force Majeure Event, then either party, following good faith consultation with the other party, may terminate this Agreement by providing prior written notice to the other party. In such instance, each party shall be responsible for their own costs and expenses incurred prior to such termination except if the Force Majeure Event occurs during the Event Period, whereas Applicant will reimburse City for all actual and documented costs incurred related to the Event, as otherwise provided for hereunder. In the event that the total amount payable by Applicant hereunder is less than the amount of the Deposit, the City shall return the difference between the actual and documented amount payable by Applicant hereunder and the amount of the Deposit, within thirty (30) days following such termination.

28. **GOVERNING LAW.** This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida and shall inure to and be binding upon the parties, their successors and assigns. Venue for any action brought in state court shall be in Broward County, Florida. Venue for any action brought in Federal Court shall be in the Southern District of Florida, Fort Lauderdale Division. The parties consent to the personal jurisdiction of the aforementioned courts and irrevocably waive any objections to said jurisdiction.

29. **AMENDMENT.** No modification, amendment or alteration of the terms or conditions of this Agreement shall be effective unless contained in a written document duly executed by both parties, with the same formality as this Agreement.

30. **WAIVER OF BREACH.** Failure by City or Applicant to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement.

31. **EXTENT OF AGREEMENT.** This Agreement represents the entire and integrated Agreement between City and Applicant with respect to the Event and supersedes all prior negotiations, representations or agreements either written or oral.

32. **NOTICE.** Whenever any party desires to give notice to any other party, it must be given by written notice sent by registered United States mail, with return receipt requested, addressed to the party for whom it is intended at the place designated below and the place so designated shall remain such until they have been changed by written notice in compliance with the provisions of this section. For the present, the parties designate the following as the respective places for giving notice:

CITY:

City of Fort Lauderdale
Attn: City Manager
100 North Andrews Avenue
Fort Lauderdale, FL 33301

With a copy to:

City of Fort Lauderdale
Attn: City Attorney
100 North Andrews Avenue
Fort Lauderdale, Florida 33301

APPLICANT:
Florida Panthers Hockey Club Enterprises, Inc.
Attn: Matthew Caldwell
One Panther Parkway
Sunrise, FL 33323
caldwellm@floridapanthers.com

With a copy to:

Florida Panthers Hockey Club Enterprises, Inc.
Attn: Ed Wildermuth
One Panther Parkway
Sunrise, FL 33323
wildermuthe@floridapanthers.com

With a courtesy copy sent to Dean Matsuzaki, Executive Vice President, Events, NHL Enterprises, L.P. (DMatsuzaki@nhl.com)

33. **SEVERANCE.** In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless City or Applicant elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) days after the court's becomes final.

34. **NON-DISCRIMINATION.** In the performance of this Agreement, Applicant shall not discriminate against any vendor, concessionaire, employee, patron, visitor, attendee or customer because of sex, age, race, color, religion, ancestry, national origin or sexual orientation. Applicant agrees to comply with the terms and provisions of the Americans with Disabilities Act and shall make the Event Site ~~and Event Impact Areas~~ accessible for persons with disabilities.

35. **EMERGENCY ACCESS:** Applicant agrees to provide any and all emergency access required by the City and its employees for the safety and welfare of the community and those attending the Event, and proper entrances into any gates which are locked. If, in the course of Applicant's operations, Applicant or City, or their officers, agents and/or employees, become aware of any condition in or about the Event Site or Event Impact Areas which may be dangerous, Applicant will promptly correct such condition or cease operations upon becoming aware or being notified of such condition so as not to endanger persons or property.

36. **PUBLIC RECORDS:**

Applicant shall keep true, complete and correct books and records of all transactions and activities pursuant to this Agreement. Applicant recognizes and acknowledges that all such records shall be subject to Florida Public Records Law, Section 119.0701, Florida Statutes, as amended. **IF THE APPLICANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE APPLICANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.**

37. MISCELLANEOUS PROVISIONS:

- a. Applicant agrees to exercise a good faith and reasonable effort to work with the City Police Department and representatives of the adjacent Homeowners Associations to implement a plan permitting homeowner's ingress and egress to their residences during the course of the Event. In addition, the Applicant will work with the City Public Affairs Division to disseminate traffic plan information to impacted residents and businesses in the Event Impact Areas, as well as schedule and facilitate a public meeting at a location near the Event Site to communicate general event and traffic plan information to the public. The logistics and date/time of the meeting shall be approved by the City, with the meeting taking place at least ninety (90) days prior to the first performance day of the Event.
- b. The use of fireworks shall comply with all applicable state laws and shall require a fireworks permit from the City fire department.
- c. Applicant acknowledges that it is solely responsible for all utilities for the Event including, without limitation, electrical, water, and sewer and storm sewer hookup requirements.
- d. Applicant understands that City periodically amends its fee structure for events being held within the City. Applicant agrees that any additional fee structures approved by the City Commission prior to the 2023 Event will be applied and Applicant shall be responsible for the same, so long as the City gives Applicant at least six (6) months prior written notice of any such additional fees, and where such fees are excessive (as determined by Applicant in its sole discretion), Applicant shall have the right to terminate this Agreement with respect to the 2023 Event upon written notice to the City.
- e. In the Event that the City is required to file any legal action against Applicant to collect any fees due under this Agreement and prevails in such legal action, City shall be entitled to its costs of collection, repairs, reasonable attorney's fees and costs and interest at the maximum rate allowable by law.
- f. The Applicant shall be permitted to serve alcoholic beverages as a concession of the Event, and the Applicant may extend this right to permitted third parties, in accordance with all applicable licenses, regulatory requirements and the City of Fort Lauderdale Code

of Ordinances.

g. The Applicant, after receiving permission by the City's Contract Administrator and subject to the terms of this Agreement, reserves the right to add decor, including, but not limited to signage in and around the Event Site or cover any existing signage, as authorized by the City of Fort Lauderdale Code of Ordinances.

h. As between the parties, ~~The~~ Applicant, and its respective designees, after receiving permission by the City's Contract Administrator, such permission not to be unreasonably withheld, conditioned or delayed, may conduct filming anywhere at the Event Site that is part of this Agreement and as between the parties, shall retain all rights to such.

i. The Applicant will have a right to an independent audit of City's records to confirm the accuracy of the fees and expenses incurred by the City.

j. Notwithstanding anything contained herein to the contrary, any timelines set forth herein may be revised and/or determined by the City and Applicant, upon the mutual written consent of the Parties

k. Where any provision of this Agreement requires approval by or agreement with the City, the agreement or approval of [_____] ([email address and cell phone number]), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement with the Applicant, the agreement or approval of Bryce Hollweg (hollwegb@floridapanthers.com and 954.838.1353), shall be sufficient for such purpose. Where any provision of this Agreement requires approval by or agreement by the Applicant's ~~Partners,~~ Partners, ~~the agreement or approval of~~ Dean Matsuzaki, Executive Vice President, Events (dmatsuzaki@nhl.com and 347.853.4339), or Nick Gennarelli, Vice President, Events (ngennarelli@nhl.com and 917.647.3239), shall be sufficient contacted for such purpose. The City and Applicant agree that such approval may be provided via email.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first above written.

CITY

WITNESSES:

CITY OF FORT LAUDERDALE, a
municipal corporation of the State of
Florida:

Signature

By: _____
Dean J. Trantalis, Mayor

[Witness print or type name]

Signature

By: _____
GREG CHAVARRIA
City Manager

[Witness print or type name]

ATTEST:

APPROVED AS TO FORM:
D'WAYNE M. SPENCE
Interim City Attorney

By: _____
DAVID R. SOLOMAN, City Clerk

By: _____
Patricia SaintVil-Joseph
Assistant City Attorney

APPLICANT

**FLORIDA PANTHERS HOCKEY
CLUB ENTERPRISES, INC.**, a Florida
profit corporation

WITNESSES:

Witness print or type name]

[Witness print or type name]

(CORPORATE SEAL)

By: _____
Matthew Caldwell, President/CEO

ATTEST:

By: _____
Print Name: _____
Title: _____

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2023, by **Matthew Caldwell**, President/CEO for Florida Panthers Hockey Club Enterprises, Inc., a Florida profit corporation. He/she is personally known to me or has produced as identification.

(SEAL)

Notary Public, State of Florida _____
(Signature of Notary Public)

Name of Notary Public)

Personally Known _____ OR Produced Identification _____

Type of Identification Produced _____

My Commission Expires: _____
Commission Number: _____

**EXHIBIT “A”
EVENT PERIOD**

Set Up:

Wednesday, January 25, 2023, through Wednesday, February 1, 2023 (8:00 am – 6:00 pm)

Event:

Thursday, February 2, 2023, through Saturday, February 4, 2023 (10:00 am – 10:00 pm)*

* The NHL All-Star Beach Bash presented by New Amsterdam Vodka will take place Saturday, February 4, 2023 (6:30 pm – 11:59 pm)

Breakdown of Event:

Sunday, February 5, 2023 – Thursday, February 9, 2023 (8:00 am – 6:00 pm)

Notwithstanding anything contained herein to the contrary, the Applicant, and its respective designees, employees, contractors and agents (including, the Outside Vendors), shall have 24/7 access to the Event Site during the Event Period, commencing at 8:00 am on January 25, 2023, and ending at 6:00 pm on February 9, 2023.

EXHIBIT “B”

DESCRIPTION OF EVENT SITE

Event site means collectively the area on the barrier island used to hold the event from the B Ocean extending north to SE 5th Street and A1A to the Atlantic Ocean together with a portion of Las Olas Oceanside Park.

EXHIBIT “C”
MAINTENANCE OF TRAFFIC PLAN

**EXHIBIT “D”
SITE PLAN MAP**

**EXHIBIT “E”
CREATIVE GRAPHICS**

AGREEMENT FOR RECYCLABLE MATERIALS PROCESSING SERVICES

THIS AGREEMENT for Recyclable Materials Processing Services (“Agreement”), made this _____ day of _____ 2023, is by and between the City of Fort Lauderdale, a Florida municipal corporation (“City”), whose address is 100 North Andrews Avenue, Fort Lauderdale, Florida 33301-1016, and **Waste Management Inc. of Florida, a Florida corporation (“Contractor” or “Company,” collective referred to as “Parties”)**, whose address is 800 Capitol Street, Suite 3000, Houston, Texas 77002, Email: alimones@wm.com; Phone: 786-261-7812.

WITNESSETH:

For and in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the Contractor shall provide Recyclable Materials Processing Services (the “Work”), and the City and the Contractor further covenant and agree as follows:

I. DOCUMENTS

The following documents (collectively “Contract Documents”) are hereby incorporated into and made part of this Agreement:

- A. This Agreement.
- B. The City’s General Conditions (“Exhibit A”).
- C. The Contractor’s Proposal (“Composite Exhibit B”).¹

All Contract Documents may also be collectively referred to as the “Documents.” In the event of any conflict between or among the Documents or any ambiguity or missing specifications or instruction, the following priority is established:

- A. This Agreement dated _____, 2023, and any attachments.
- B. Second, Exhibit A.
- C. Third, Composite Exhibit B.

Specifically, the City’s Agreement and General Conditions solely determine issues of indemnity and payment process.

II. SCOPE

The Contractor shall perform the Work under the general direction of the City as set forth in the Contract Documents.

Unless otherwise specified herein, the Contractor shall perform all Work identified in this Agreement. The Parties agree that Exhibit B contains a description of Contractor’s obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all

¹ It should be noted that Exhibit B, Contractor’s Proposal, has one Exhibit, Exhibit “E” attached and incorporated into the Composite Exhibit.

labor, materials, equipment, and tasks which are such an inseparable part of the Work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.

Contractor acknowledges and agrees that the City's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

By signing this Agreement, the Contractor represents that it thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed.

III. TERM OF THE AGREEMENT

The initial term of this Agreement shall commence on **February 1, 2023 and shall end on July 30, 2030**. In the event the term of this Agreement extends beyond the end of any fiscal year of City, to wit, September 30th, the continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds.

IV. COMPENSATION

The Contractor agrees to provide the services and/or materials as specified in the Contract Documents at the cost specified in Composite Exhibit B. It is acknowledged and agreed by Contractor that this amount is the maximum payable and constitutes a limitation upon City's obligation to compensate Contractor for its services related to this Agreement. This maximum amount, however, does not constitute a limitation of any sort upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services. Except as otherwise provided herein, no amount shall be paid to Contractor to reimburse Contractor's expenses.

V. METHOD OF BILLING AND PAYMENT

Contractor may submit invoices for compensation no more often than monthly, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy is due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and/or the goods provided.

City shall pay Contractor within forty-five (45) days of receipt of Contractor's proper invoice, as provided in the Florida Local Government Prompt Payment Act.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the City's Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the City's Contract

Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.

VI. GENERAL CONDITIONS

A. Indemnification

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. The provisions and obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the City Manager, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by City.

B. Intellectual Property

Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, royalties, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any infringement or allegation of infringement of any patent, copyright, or other intellectual property right in connection with the Contractor's or the City's use of any copyrighted, patented or un-patented invention, process, article, material, or device that is manufactured, provided, or used pursuant to this Agreement. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

C. Termination for Cause

The City may terminate this Agreement for cause if the Contractor in breach has not corrected the breach within ten (10) days after written notice from the City identifying the breach. The City Manager may also terminate this Agreement upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health or safety. The Parties agree that if the City erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

This Agreement may be terminated by the City for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment

of false or incorrect bills or invoices, failure to perform the Work to the City's satisfaction; or the Contractor's failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.

D. Termination for Convenience

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for convenience by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. In the event this Agreement is terminated for convenience, Contractor shall be paid for any services performed to the City's satisfaction pursuant to the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges and agrees that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.

E. Cancellation for Unappropriated Funds

The City reserves the right, in its best interest as determined by the City, to cancel this Agreement for unappropriated funds or unavailability of funds by giving written notice to the Contractor at least thirty (30) days prior to the effective date of such cancellation. The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise provided by law.

F. Insurance

As a condition precedent to the effectiveness of this Agreement, during the term of this Agreement and during any renewal or extension term of this Agreement, the Contractor, at the Contractor's sole expense, shall provide insurance of such types and with such terms and limits as noted below. Providing proof of and maintaining adequate insurance coverage are material obligations of the Contractor. The Contractor shall provide the City a certificate of insurance evidencing such coverage. The Contractor's insurance coverage shall be primary insurance for all applicable policies. The limits of coverage under each policy maintained by the Contractor shall not be interpreted as limiting the Contractor's liability and obligations under this Agreement. All insurance policies shall be from insurers authorized to write insurance policies in the State of Florida and that possess an A.M. Best rating of A-, VII or better. All insurance policies are subject to approval by the City's Risk Manager.

The coverages, limits, and endorsements required herein protect the interests of the City, and these coverages, limits, and endorsements may not be relied upon by the Contractor for assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposure, whether as a result of this Agreement or otherwise. The requirements contained herein, as well as the City's review or acknowledgement, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Agreement.

The following insurance policies and coverages are required:

Commercial General Liability

Coverage must be afforded under a Commercial General Liability policy with limits not less than:

- \$1,000,000 each occurrence and \$2,000,000 aggregate for Bodily Injury, Property Damage, and Personal and Advertising Injury
- \$1,000,000 each occurrence and \$2,000,000 aggregate for Products and Completed Operations

Policy must include coverage for Contractual Liability and Independent Contractors.

The City and the City's officers, employees, and volunteers are to be covered as additional insureds with a CG 20 26 04 13 Additional Insured – Designated Person or Organization Endorsement or similar endorsement providing equal or broader Additional Insured Coverage with respect to liability arising out of activities performed by or on behalf of the Contractor. The coverage shall contain no special limitation on the scope of protection afforded to the City or the City's officers, employees, and volunteers.

Workers' Compensation and Employer's Liability

Coverage must be afforded per Chapter 440, Florida Statutes (2022). Any person or entity performing work for or on behalf of the City must provide Workers' Compensation insurance. Exceptions and exemptions will be allowed by the City's Risk Manager, if they are in accordance with Florida Statute (2022).

The Contractor waives, and the Contractor shall ensure that the Contractor's insurance carrier waives, all subrogation rights against the City and the City's officers, employees, and volunteers for all losses or damages. The City requires the policy to be endorsed with WC 00 03 13 Waiver of our Right to Recover from Others or equivalent.

The Contractor must be in compliance with all applicable State and federal workers' compensation laws, including the U.S. Longshore Harbor Workers' Act and the Jones Act, if applicable.

Insurance Certificate Requirements

- a. The Contractor shall provide the City with valid Certificates of Insurance (binders are unacceptable) no later than thirty (30) days prior to the start of work contemplated in this Agreement.
- b. The Contractor shall provide to the City a Certificate of Insurance having a thirty (30) day notice of cancellation; ten (10) days' notice if cancellation is for nonpayment of premium.
- c. In the event that the insurer is unable to accommodate the cancellation notice requirement, it shall be the responsibility of the Contractor to provide the proper notice.

Such notification will be in writing by registered mail, return receipt requested, and addressed to the certificate holder.

- d. In the event the Agreement term goes beyond the expiration date of the insurance policy, the Contractor shall provide the City with an updated Certificate of Insurance no later than ten (10) days prior to the expiration of the insurance currently in effect. The City reserves the right to suspend the Agreement until this requirement is met.
- e. The Certificate of Insurance shall indicate whether coverage is provided under a claims-made or occurrence form. If any coverage is provided on a claims-made form, the Certificate of Insurance must show a retroactive date, which shall be the effective date of the initial agreement or prior.
- f. The City shall be named as an Additional Insured on all liability policies, with the exception of Workers' Compensation.
- g. The City shall be granted a Waiver of Subrogation on the Contractor's Workers' Compensation insurance policy.
- h. The title of the Agreement, Bid/Contract number, event dates, or other identifying reference must be listed on the Certificate of Insurance.

The Certificate Holder should read as follows:

City of Fort Lauderdale
Procurement Services Division
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

The Contractor has the sole responsibility for the payment of all insurance premiums and shall be fully and solely responsible for any costs or expenses as a result of a coverage deductible, co-insurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, co-insurance penalty, self-insured retention, or coverage exclusion or limitation. Any costs for adding the City as an Additional Insured shall be at the Contractor's expense.

If the Contractor's primary insurance policy/policies do not meet the minimum requirements, as set forth in this Agreement, the Contractor may provide evidence of an Umbrella/Excess insurance policy to comply with this requirement.

The Contractor's insurance coverage shall be primary insurance as applied to the City and the City's officers, employees, and volunteers. Any insurance or self-insurance maintained by the City covering the City, the City's officers, employees, or volunteers shall be non-contributory.

Any exclusion or provision in the insurance maintained by the Contractor that excludes coverage for work contemplated in this Agreement shall be unacceptable and shall be considered breach of contract.

All required insurance policies must be maintained until the contract work has been accepted by the City, or until this Agreement is terminated, whichever is later. Any lapse in coverage shall be considered breach of contract. In addition, Contractor must provide to

the City confirmation of coverage renewal via an updated certificate should any policies expire prior to the expiration of this Agreement. The City reserves the right to review, at any time, coverage forms and limits of Contractor's insurance policies.

The Contractor shall provide notice of any and all claims, accidents, and any other occurrences associated with this Agreement shall be provided to the Contractor's insurance company or companies and the City's Risk Management office as soon as practical.

It is the Contractor's responsibility to ensure that any and all of the Contractor's independent contractors and subcontractors comply with these insurance requirements. All coverages for independent contractors and subcontractors shall be subject to all of the applicable requirements stated herein. Any and all deficiencies are the responsibility of the Contractor.

G. Environmental, Health and Safety

Contractor shall place the highest priority on health and safety and shall maintain a safe working environment during performance of the Work. Contractor shall comply, and shall secure compliance by its employees, agents, and subcontractors, with all applicable environmental, health, safety and security laws and regulations, and performance conditions in this Agreement. Compliance with such requirements shall represent the minimum standard required of Contractor. Contractor shall be responsible for examining all requirements and determine whether additional or more stringent environmental, health, safety and security provisions are required for the Work. Contractor agrees to utilize protective devices as required by applicable laws, regulations, and any industry or Contractor's health and safety plans and regulations, and to pay the costs and expenses thereof, and warrants that all such persons shall be fit and qualified to carry out the Work.

H. Standard of Care

Contractor represents that it is qualified to perform the Work, that Contractor and its subcontractors possess current, valid state and/or local licenses to perform the Work, and that their services shall be performed in a manner consistent with that level of care and skill ordinarily exercised by other qualified contractors under similar circumstances.

I. Rights in Documents and Work

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City; and Contractor disclaims any copyright in such materials. In the event of and upon termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the City's Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until Contractor delivers all documents to the City as provided herein.

J. Audit Right and Retention of Records

City shall have the right to audit the books, records, and accounts of Contractor and Contractor's subcontractors that are related to this Agreement. Contractor shall keep, and Contractor shall cause Contractor's subcontractors to keep, such books, records, and accounts as may be necessary in order to record complete and correct entries related to this

Agreement. All books, records, and accounts of Contractor and Contractor's subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or Contractor's subcontractors, as applicable, shall make same available at no cost to City in written form. Contractor and Contractor's subcontractors shall preserve and make available, at reasonable times for examination and audit by City in Broward County, Florida, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida public records law, Chapter 119, Florida Statutes (2022), as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida public records law is determined by City to be applicable to Contractor and Contractor's subcontractors' records, Contractor and Contractor's subcontractors shall comply with all requirements thereof; however, Contractor and Contractor's subcontractors shall violate no confidentiality or non-disclosure requirement of either federal or state law. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall, by written contract, require Contractor's subcontractors to agree to the requirements and obligations of this Section.

The Contractor shall maintain during the term of the Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement.

K. Public Entity Crime Act

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes (2022), as may be amended from time to time, which essentially provides that a person or affiliate who is a contractor, Contractor, or other provider and who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or Contractor under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes (2022), as may be amended from time to time, for category two purchases for a period of 36 months from

the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement and may result in debarment from City's competitive procurement activities.

L. Independent Contractor

Contractor is an independent Contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of the Contractor. In providing such services, neither Contractor nor Contractor's agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

M. Inspection and Non-Waiver

Contractor shall permit the representatives of City to inspect and observe the Work at all times.

The failure of the City to insist upon strict performance of any other terms of this Agreement or to exercise any rights conferred by this Agreement shall not be construed by Contractor as a waiver of the City's right to assert or rely on any such terms or rights on any future occasion or as a waiver of any other terms or rights.

N. Assignment and Performance

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the prior written consent of the other party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Schedule of Subcontractor Participation (if applicable). City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform Contractor's duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

In the event Contractor engages any subcontractor in the performance of this Agreement, Contractor shall ensure that all of Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of Contractor's subcontractors' performance, and liable for any of Contractor's subcontractors' non-performance and all of Contractor's subcontractors' acts and omissions. Contractor shall defend at Contractor's expense, counsel being subject to City's

approval or disapproval, and indemnify and hold City and City's officers, employees, and agents harmless from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, by or in favor of any of Contractor's subcontractors for payment for work performed for City by any of such subcontractors, and from and against any claim, lawsuit, third party action, fine, penalty, settlement, or judgment, including any award of attorney fees and any award of costs, occasioned by or arising out of any act or omission by any of Contractor's subcontractors or by any of Contractor's subcontractors' officers, agents, or employees. Contractor's use of subcontractors in connection with this Agreement shall be subject to City's prior written approval, which approval City may revoke at any time.

O. Conflicts

Neither Contractor nor any of Contractor's employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to Contractor's performance under this Agreement.

Contractor further agrees that none of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

P. Schedule and Delays

Time is of the essence in this Agreement. By signing, Contractor affirms that it believes the schedule to be reasonable; provided, however, the Parties acknowledge that the schedule might be modified as the City directs.

Q. Materiality and Waiver of Breach

City and Contractor agree that each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties in exchange for *quid pro quo*, that each is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof.

City's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

R. Compliance with Laws

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing Contractor's duties, responsibilities, and obligations pursuant to this Agreement.

S. Severance

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the provisions not having been found by a court of competent jurisdiction to be invalid or unenforceable shall continue to be effective.

T. Limitation of Liability

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$1,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract or for any action or claim arising from this Agreement to be limited to a maximum amount of \$1,000 less the amount of all funds actually paid by the City to Contractor pursuant to this Agreement.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to Contractor for damages in an amount in excess of \$1,000 which amount shall be reduced by the amount actually paid by the City to Contractor pursuant to this Agreement, for any action for breach of contract or for any action or claim arising out of this Agreement. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon City's liability as set forth in Section 768.28, Florida Statutes (2022), as may be amended or revised.

To the maximum extent permitted by applicable law, Contractor and its suppliers and licensors shall not be liable for any indirect, special, incidental, consequential, or punitive damages, whether foreseeable or not, including but not limited to: those arising out of access to or inability to access the services, software, content, or related technical support; damages or costs relating to the loss of: profits or revenues, goodwill, data (including loss of use or of data, loss or inaccuracy or corruption of data); or cost of procurement of substitute goods, services or technology, even if advised of the possibility of such damages and even in the event of the failure of any exclusive remedy. In no event will Contractor's and its suppliers' and licensors' liability exceed the amounts paid by client under this Agreement regardless of the form of the claim (including without limitation, any contract, product liability, or tort claim (including negligence, statutory or otherwise).

U. Jurisdiction, Venue, Waiver, Waiver of Jury Trial

The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claims arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MIGHT HAVE TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

V. Amendments

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Mayor-Commissioner and/or City Manager, as determined by City Charter and Ordinances, and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

W. Prior Agreements

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

X. Payable Interest

Except as required and provided for by the Florida Local Government Prompt Payment Act, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

Y. Representation of Authority

Each individual executing this Agreement on behalf of a Party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such Party and does so with full legal authority.

Z. Uncontrollable Circumstances ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

1. The non-performing Party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;
2. The excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;
3. No obligations of either Party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and
4. The non-performing Party uses its best efforts to remedy its inability to perform. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the Agreement shall be extended by a period equal to that during which either Party's performance is suspended under this Section.

AA. Scrutinized Companies

Subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), affirmed, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), that it is not engaged in a boycott of Israel, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2022), as may be amended or revised. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the

Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), or is engaged in a boycott of Israel or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

BB. Public Records

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2022), TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, 100 N. ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA, 33301, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV.

Contractor shall:

1. Keep and maintain public records that ordinarily and necessarily would be required by the City in order to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2022), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of this Agreement if the Contractor does not transfer the records to the City.
4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

CC. Non-Discrimination

The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual

orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2022), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in Section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

DD. E-Verify

As a condition precedent to the effectiveness of this Agreement, pursuant to Section 448.095, Florida Statutes (2022), as may be amended or revised, the Contractor and its subcontractors shall register with and use the E-Verify system to electronically verify the employment eligibility of newly hired employees.

1. The Contractor shall require each of its subcontractors, if any, to provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. The Contractor shall maintain a copy of the subcontractor's affidavit for the duration of this Agreement and in accordance with the public records requirements of this Agreement.
2. The City, the Contractor, or any subcontractor who has a good faith belief that a person or entity with which it is contracting has knowingly violated Section 448.09(1), Florida Statutes (2022), as may be amended or revised, shall terminate the Agreement with the person or entity.
3. The City, upon good faith belief that a subcontractor knowingly violated the provisions of Section 448.095(2), Florida Statutes (2022), as may be amended or revised, but that the Contractor otherwise complied with Section 448.095(2), Florida Statutes (2022), as may be amended or revised, shall promptly notify Contractor and order the

Contractor to immediately terminate the contract with the subcontractor, and the Contractor shall comply with such order.

4. An Agreement terminated under Sections 448.095(2)(c)1. or 2., Florida Statutes (2022), as may be amended or revised, is not a breach of contract and may not be considered as such. If the City terminates this Agreement under Section 448.095(2)(c), Florida Statutes (2022), as may be amended or revised, the Contractor may not be awarded a public contract for at least one year after the date on which the Agreement was terminated. The Contractor is liable for any additional costs incurred by the City as a result of termination of this Agreement.

5. Contractor shall include in each of its subcontracts, if any, the requirements set forth in this Section VI.DD., including this subparagraph, requiring any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, to include all of the requirements of this Section VI.DD. in its subcontracts. Contractor shall be responsible for compliance by any and all subcontractors, as defined in Section 448.095(1)(j), Florida Statutes (2022), as may be amended or revised, with the requirements of Section 448.095, Florida Statutes (2022), as may be amended or revised.

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IN WITNESS WHEREOF, the City and the Contractor execute this Agreement as follows:

ATTEST:

CITY OF FORT LAUDERDALE

By: _____
David R. Soloman, City Clerk

By: _____
Greg Chavarria, City Manager

_____ day of _____, 2023

Approved as to form:
D'Wayne M. Spence, Interim City Attorney

By: _____
Rhonda Montoya Hasan
Assistant City Attorney

WITNESSES:

WASTE MANAGEMENT INC. OF FLORIDA

Signature

By: _____
David M. Myhan, President

Print Name

Signature

Print Name

(CORPORATE SEAL)

STATE OF _____:
COUNTY OF _____:

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, 2023, David M. Myhan as President for WASTE MANAGEMENT INC. OF FLORIDA, a Florida corporation.

(SEAL)

Notary Public, State of _____
(Signature of Notary Public)

(Print, Type, or Stamp Commissioned Name of
Notary Public)

Personally Known _____ OR Produced Identification _____
Type of Identification Produced _____

EXHIBIT A

CITY OF FORT LAUDERDALE GENERAL CONDITIONS FOR PIGGYBACK, COOPERATIVE, AND BIDDING-EXEMPT CONTRACTS

These conditions are standard for all piggyback, local, state, or national cooperative procurement organization, federal General Services Administration, State of Florida contracts, and bidding-exempt contracts for the purchase of goods or services by the City of Fort Lauderdale.

PART I CONDITIONS:

1.01 DELIVERY: Time will be of the essence for any orders placed as a result of this Agreement. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified in this Agreement.

1.02 PACKING SLIPS: It will be the responsibility of the Contractor to attach all packing slips to the OUTSIDE of each shipment. Packing slips must provide a detailed description of what is to be received and reference the City of Fort Lauderdale purchase order number that is associated with the shipment. Failure to provide a detailed packing slip attached to the outside of shipment may result in refusal of shipment at Contractor's expense.

1.03 PAYMENT TERMS: Payment terms will be net 45 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last.

1.04 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS: The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its procurement activities.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term "Minority Business Enterprise" means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business" is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

1.05 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be identified in the proposal. If a proposer is considered for award, he or

she will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

1.06 SCRUTINIZED COMPANIES

As a condition precedent to the effectiveness of this Agreement, subject to *Odebrecht Construction, Inc., v. Prasad*, 876 F.Supp.2d 1305 (S.D. Fla. 2012), *affirmed*, *Odebrecht Construction, Inc., v. Secretary, Florida Department of Transportation*, 715 F.3d 1268 (11th Cir. 2013), with regard to the "Cuba Amendment," the Contractor certifies that it is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and that it does not have business operations in Cuba or Syria, as provided in section 287.135, Florida Statutes (2022), as may be amended or revised. As a condition precedent to any contract for goods or services of any amount and as a condition precedent to the renewal of any contract for goods or services of any amount, the Contractor certifies that it is not on the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), and that it is not engaged in a boycott of Israel. The City may terminate this Agreement at the City's option if the Contractor is found to have submitted a false certification as provided under subsection (5) of section 287.135, Florida Statutes (2022), as may be amended or revised, or been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or the Scrutinized Companies that Boycott Israel List created pursuant to Section 215.4725, Florida Statutes (2022), as may be amended or revised, or is engaged in a boycott of Israel, or has been engaged in business operations in Cuba or Syria, as defined in Section 287.135, Florida Statutes (2022), as may be amended or revised.

1.07 DEBARRED OR SUSPENDED CONTRACTORS

The Contractor certifies that neither it nor any of its principals or subcontractors are presently debarred or suspended by any federal department or agency.

Part II TAXES:

2.01 TAXES: The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for EIN is 59-6000319, and State Sales tax exemption number is 85-8013875578C-1.

PART III BONDS AND INSURANCE

3.01 PERFORMANCE BOND: If a performance bond is required by the Agreement, as a condition precedent to the effectiveness of the Agreement, the Contractor shall within fifteen (15) working days after the commencement date of the Contract, furnish to the City a Performance Bond, payable to the City of Fort Lauderdale, Florida, in the face amount specified in the Agreement as surety for faithful performance under the terms and conditions of the Agreement. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent.

Acknowledgement and agreement is given by both Parties that the amount herein set for the Performance Bond is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

3.02 INSURANCE: The Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in the Agreement.

The Contractor shall provide to the Procurement Services Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this Agreement. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED for General Liability Insurance and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. The Contractor agrees to abide by such modifications.

PART IV PURCHASE ORDER AND CONTRACT TERMS:

4.01 COMPLIANCE WITH SPECIFICATIONS, LATE DELIVERIES/PENALTIES: Items offered may be tested for compliance with contract specifications. Items delivered which do not conform to Contract specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:

- Contractor's name being removed from the City's bidder's mailing list for a specified period and Contractor not be recommended for any contract during that period.

- All City Departments being advised to refrain from doing business with the Contractor.
- All other remedies in law or equity.

4.02 ACCEPTANCE, CONDITION, AND PACKAGING: If applicable, the material delivered pursuant to the Agreement shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the Agreement, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Contractor's expense. Payment will be made only after City receipt and acceptance of materials or services.

4.03 SAFETY STANDARDS: All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupation Safety and Health Act of 1970 as amended.

4.04 ASBESTOS STATEMENT: All material supplied must be 100% asbestos free. Contractor certifies that Contractor will supply only material or equipment that is 100% asbestos free.

4.05 VERBAL INSTRUCTIONS PROCEDURE: No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.

4.06 INDEPENDENT CONTRACTOR: The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, procurement policies unless otherwise stated in the Agreement, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.

4.07 INDEMNITY/HOLD HARMLESS AGREEMENT: Contractor shall protect and defend at Contractor's expense, counsel being subject to the City's approval, and indemnify and hold harmless the City and the City's officers, employees, volunteers, and agents from and against any and all losses, penalties, fines, damages, settlements, judgments, claims, costs, charges, expenses, or liabilities, including any award of attorney fees and any award of costs, in connection with or arising directly or indirectly out of any act or omission by the Contractor or by any officer, employee, agent, invitee, subcontractor, or sublicensee of the Contractor. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

4.08 TERMINATION FOR CAUSE: If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

4.09 TERMINATION FOR CONVENIENCE: The City reserves the right, in the City's best interest as determined by the City, to cancel the Agreement by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.

4.10 CANCELLATION FOR UNAPPROPRIATED FUNDS: The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the Agreement into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

4.11 RECORDS/AUDIT: The Contractor shall maintain during the term of the Agreement all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The Contractor agrees to make available to the City Auditor or the City Auditor's designee, during normal business hours and in Broward, Miami-Dade or Palm Beach Counties, all books of account, reports, and records relating to this Agreement. The Contractor shall retain all books of account, reports, and records relating to this contract for the duration of the contract and for one year after the final payment under this Agreement, until all pending audits, investigations or litigation matters relating to the contract are closed.

or until expiration of the records retention period prescribed by Florida law or the records retention schedules adopted by the Division of Library and Information Services of the Florida Department of State, whichever is later.

4.12 PERMITS, TAXES, LICENSES: The successful Contractor shall, at Contractor's own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried out under this Agreement.

4.13 LAWS/ORDINANCES: The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this Agreement.

4.14 NON-DISCRIMINATION: The Contractor shall not discriminate against its employees based on the employee's race, color, religion, gender, gender identity, gender expression, marital status, sexual orientation, national origin, age, disability, or any other protected classification as defined by applicable law.

1. The Contractor certifies and represents that the Contractor offers the same health benefits to the domestic partners of its employees as are offered its employees' spouses or offers its employees the cash equivalent of such health benefits because it is unable to provide health benefits to its employees' domestic partners, and that the Contractor will comply with Section 2-187, Code of Ordinances of the City of Fort Lauderdale, Florida, (2022), as may be amended or revised, ("Section 2-187"), during the entire term of this Agreement.
2. The failure of the Contractor to comply with Section 2-187 shall be deemed to be a material breach of this Agreement, entitling the City to pursue any remedy stated below or any remedy provided under applicable law.
3. The City may terminate this Agreement if the Contractor fails to comply with Section 2-187.
4. The City may retain all monies due or to become due until the Contractor complies with Section 2-187.
5. The Contractor may be subject to debarment or suspension proceedings. Such proceedings will be consistent with the procedures in section 2-183 of the Code of Ordinances of the City of Fort Lauderdale, Florida.

4.15 UNUSUAL CIRCUMSTANCES: If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either Party to the Agreement occur, and those circumstances significantly affect the Contractor's cost in providing the required prior items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The Agreement can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.
2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.
3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the Agreement to relieve Contractor of a legitimate obligation under the Agreement, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying Contractor from receiving any business from the City for a stated period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

4.16 ELIGIBILITY: If applicable, the Contractor must first register with the Florida Department of State in accordance with Florida Statutes (2022), prior to entering into an Agreement with the City.

4.17 PATENTS AND ROYALTIES: The Contractor, without exception, shall defend, indemnify, and hold harmless the City and the City's employees, officers, employees, volunteers, and agents from and against liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured, published in the

performance of the contract, including their use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that prices shall include any and all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

4.18 ASSIGNMENT: Contractor shall not transfer or assign the performance required by the Agreement without the prior written consent of the City. The Contract and the monies which may become due hereunder are not assignable except with the prior written approval of the City Commission or the City Manager or City Manager's designee, depending on original approval.

4.19 GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL: The Agreement shall be interpreted and construed in accordance with, and governed by, the laws of the state of Florida. The Parties agree that the exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claims arising from, related to, or in connection with this Agreement must be litigated in federal court, the Parties agree that the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. BY ENTERING INTO THIS AGREEMENT, THE PARTIES HEREBY EXPRESSLY WAIVE ANY AND ALL RIGHTS EITHER PARTY MIGHT HAVE TO A TRIAL BY JURY OF ANY ISSUES RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

4.20 PUBLIC RECORDS

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES (2022), TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY CLERK'S OFFICE, PHONE: 954-828-5002, EMAIL: PRRCONTRACT@FORTLAUDERDALE.GOV, 100 NORTH ANDREWS AVENUE, FORT LAUDERDALE, FLORIDA 33301.

Contractor shall comply with public records laws, and Contractor shall:

1. Keep and maintain public records required by the City to perform the service.
2. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes (2022), as may be amended or revised, or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the City.
4. Upon completion of the Agreement, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

4.21 WARRANTIES OF USAGE: Any quantities listed in this Contract are estimates. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.

**EXHIBIT – RCY Processing
RECYCLING SERVICES AGREEMENT SINGLE STREAM BLENDED VALUE**

1. QUANTITY AND QUALITY:

During the term of the Agreement, Company shall take and Customer agrees to provide one hundred percent (100%) of Customer's single stream recyclables ("Recyclables"). Customer will provide in accordance with the attached Single Stream Specifications. In the event that the Recyclables do not meet the Single Stream Specifications, the load may be rejected and/or Customer shall have the sole responsibility for any resulting settlement or adjustments, including, but not limited to: price reductions, transportation, and disposal costs. Recyclables specifically exclude, and Customer agrees not to deposit or permit the deposit for collection of, any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio-hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or chemical or other properties that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of the Company's structures or equipment, or any materials containing information (in hard copy or electronic format, or otherwise) which information is protected or regulated under any local, state or federal privacy or data security laws, including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved in writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customer at all times. Title to Recyclables provided by Customer to Company is transferred to Company upon Company's receipt or collection unless otherwise provided in this Agreement or applicable law.

Company reserves the right at its sole discretion upon notice to Customer to discontinue acceptance of any category of Recyclables as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials which are subject to this Agreement.

2. RECYCLABLE VALUE:

The value of the Recyclables meeting the Single Stream Specifications shall be as set forth as in the example attached hereto. It shall be conclusively presumed that the composition of the Recyclables delivered to the Company shall be identical to the composition of all single stream recyclables processed by Company at the processing facility used, as established from time to time by Company. Notwithstanding the foregoing, Company may perform a composition study of the Recyclables example attached hereto to determine the percentage of each commodity in Customer's Recyclables and may revise the amount payable or chargeable to Customer to reflect the actual composition of Customer's Recyclables. Customer acknowledges that the value of the Recyclables may be negative.

3. PAYMENTS; CHARGES; ADJUSTMENTS:

Where the value is positive for the Recyclables, Company shall pay Customer on or about the last day of each month for Recyclables purchased during the preceding month, after deduction of any Charges owed to Company by Customer for services performed hereunder. Customer will make payments to Company in accordance with the Florida Prompt Payment Act.

4. SERVICE:

Customer shall have the option to deliver Recyclables, at Customer's expense, to WM Davie Transfer Station, 2380 College Avenue, Davie, FL 33317. ("Facility") during the Facilities operating hours, Monday through Saturday, excluding Christmas Day. All Recyclables must be delivered in self-dumping trucks and will be weighed in and out by Company at the Facility. Company retains the right to direct deliveries to one of Company's other Broward County facilities for operational reasons in its sole discretion. If deliveries are so directed by the Company, Company shall reimburse Customer for the reasonable differential in transportation costs, if any, incurred by Customer during such period of redirection.

5. INDEMNIFICATION/LIMIT OF LIABILITY:

Company agrees to indemnify, defend and save Customer, its parent, subsidiaries, and corporate affiliates, harmless from and against any and all liability which Customer may be responsible for or pay out as a result of bodily injuries (including death), property damage, or any violation or alleged violation of law, to the extent caused by any negligent act or omission or willful misconduct of the Company or its employees, which occurs during the collection or transportation of Customer's Recyclables, or (b) as a result of the disposal of Customer's Recyclables in a facility owned by the Company or a Waste Management company, provided that the Company's indemnification obligations will not apply to occurrences involving Excluded Materials.

Neither party shall be liable to the other for consequential, incidental or punitive damages arising out of the performance or breach of this Agreement.

SINGLE STREAM SPECIFICATIONS

During the term of the Agreement, Company shall take and Customer agrees to provide one hundred percent (100%) of Customer's single stream recyclables ("Recyclables") In accordance with the specifications below ("Specifications"). In the event that the Recyclables do not meet Specifications, the load may be rejected and/or Customer shall have the sole responsibility for any resulting settlement or adjustments, Including, but not limited to: price reductions, transportation, disposal costs, and contamination fees. Recyclables specifically exclude, and Customer agrees not to deposit or permit the deposit for collection of any waste tires, radioactive, volatile, corrosive, flammable, explosive, biomedical, infectious, bio- hazardous, regulated medical or hazardous waste, toxic substance or material, as defined by, characterized or listed under applicable federal, state, or local laws or regulations, or chemical or other properties that are deleterious or capable of causing material damage to any part of Company's property, its personnel or the public or materially impair the strength or the durability of the Company's structures or equipment, or any materials containing information (In hard copy or electronic format, or otherwise) which Information Is protected or regulated under any local, state or federal privacy or data security laws, Including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances or other waste not approved In writing by Company (collectively, "Excluded Materials"). Title to and liability for Excluded Materials shall remain with Customer at all times. Title to Recyclables provided by Customer to Company Is transferred to Company upon Company's receipt or collection unless otherwise provided In this Agreement or applicable law.

RECYCLABLES must be dry, loose (not bagged) and Include ONLY the following:

Aluminum cans - empty	Newspaper
PEI bottles with the symbol #1 -with screw tops only - empty	Mail
HDPE plastic bottles with the symbol #2 (milk, water bottles detergent. and shampoo bottles etc.) - empty	Magazines, glossy Inserts, pamphlets and catalogs
Plastic containers with symbols #3-#7 - empty (no expanded polystyrene)	Uncoated paperboard (ex. cereal boxes; food and snack boxes)
Steel and tin cans - empty	Uncoated printing, writing and office paper
Glass food and beverage containers - brown, clear, or green - empty	Old corrugated containers/cardboard (uncoated)
Polycoated/Asceptic containers	Phone books

NON-RECYCLABLES Include, but are not limited to the following:

Plastic bags and bagged materials (even If containing Recyclables)	Microwavable trays
Mirrors	Window or auto glass
Light bulbs	Coated cardboard
Porcelain and ceramics	Plastics unnumbered
Expanded polystyrene	Coat hangers
Glass and metal cookware/bakeware	Household appliances and electronics
Hoses cords wires	Yard waste construction debris and wood
Flexible plastic or film packaging and multi-laminated materials	Needles, syringes, IV bags or other medical supplies
Food waste and liquids, containers containing such items	Textiles, cloth, or any fabric (bedding, pillows sheets etc.)
Excluded Materials or containers which contained Excluded Materials	Napkins, paper towels, tissue, paper plates, paper cups, and plastic utensils
Any Recyclable materials or pieces of Recyclables less than 4" in size in any dimension	Propane tanks, batteries

DELIVERY SPECIFICATIONS:

Material delivered by or on behalf of Customer may not contain more than 40% Non-Recyclables ("Excess Contamination") and may contain no Excluded Materials. In the event a load does not meet Specifications, the load may be rejected and/or Customer may be charged additional processing, return or disposal costs; provided, however, that if delivered material contains more than 10% Non-Recyclables (but does not contain Excluded Materials), the material will be accepted and the Excess Contamination shall be subject to the charges set forth in Exhibit E .

"Excluded Materials" means radioactive, volatile, corrosive, flammable, explosive, biomedical, Infectious, bio-hazardous or toxic substance or material, or regulated medical or hazardous waste as defined by, characterized or listed under applicable federal, state, or local laws or regulations, materials containing Information (In hard copy or electronic format, or otherwise) which Information Is protected or regulated

under any local, state or federal privacy or data security laws, Including, but not limited to the Health Insurance Portability and Accountability Act of 1996, as amended, or other regulations or ordinances.

Company reserves the right upon notice to discontinue acceptance of any category of materials set forth above as a result of market conditions related to such materials and makes no representations as to the recyclability of the materials. Company shall provide six (6) month advanced written notice to Customer of Its decision to discontinue acceptance of any such material.

Customer shall deliver Recyclables, at Customer's expense, to Company's facility located at 2380 College Avenue, Davie, FL 33317,

or to such other location IN BROWARD COUNTY as the Company may direct from time to time ("Facility") during the Facility's operation hours, Monday through Saturday, excluding Christmas Day. All Recyclables must be delivered in self-dumping trucks and will be weighed in and out by Company at the facility.

SINGLE STREAM PRICING

1. VALUE SHARE

Where the Blended Value is greater than the Processing Fee plus Transportation Fee, Customer's value share is a percentage of the difference between the Blended Value and the Processing Fee plus Transportation Fee as listed below. When the Blended Value Is less than the Processing Fee plus Transportation Fee, Customer shall pay Company the difference between the Processing Fee plus Transportation Fee and the Blended Value.

Where the Blended Value is greater than the Processing Fee plus Transportation Fee and equal to or less than \$175.00, the Customer's value share is 55% of the difference.

Where the Blended Value is greater than \$175.00 and equal to or less than \$180.00, the Customer's value share is 65% of the difference.

Where the Blended Value is greater than \$180.00, the Customer's value share is 75% of the difference.

2. BLENDED VALUE

To calculate the Blended Value per ton of the Recyclables,

- (a) The percentage of each Recyclable and Non-Recyclable component set forth below contained in the Customer's recyclables as established and revised from time-to-time by audit, is multiplied by the current value of each commodity set forth below; and
- (b) Each commodity value per ton is added together to obtain the Blended Value per ton.

Customer acknowledges that the value of a

commodity may be negative. Blended Value Is

calculated monthly.

- "PS" means the average price published at www.SecondaryFiberPricing.com for the Southeast USA Region, domestic price, 1st Issue of the month retroactive to the first of the month.
- "SMP" means the average price published at www.SecondaryMaterialsPricing.com for the Atlanta (Southeast USA) Region, first dated price each month, retroactive to the first of the month.
- If PS or SMP (or both) is no longer reflective of prevailing market conditions or if an alternative publication more accurately reflects such market conditions, then Company may substitute such alternative publication(s) or alternate method to determine the value of each commodity set forth below.
- "T&D" means the charge for transporting residue from the processing facility per ton in the month of delivery to the disposal facility.

Material	Index Description
Mixed Paper	PS 54 Mixed Paper (MP)
Newspaper	PS 56 Sorted Residential Papers (SRNP)
Corrugated Containers	PS 11 Corrugated Containers
Aluminum cans	SMP Metals Aluminum cans (Sorted, Baled, ¢/lb., picked up)
Steel cans	SMP Metals Steel cans (Sorted, Baled, \$/Gross ton, picked up)
PET	SMP Plastics PET (Baled, ¢/lb., picked up)
Natural HDPE	SMP Plastics Natural HDPE (Baled ¢/lb., picked up)
Colored HDPE	SMP Plastics Colored HDPE (Baled ¢/lb., picked up)
Plastics #3-#7	SMP Plastics Commingled (#3-7, Baled ¢/lb., picked up)
Glass (3 mix)	SMP Glass 3 Mix (\$/ton del., as Recyclables or Disposable)
Polycoated cartons	\$0.00
Contamination (up to 10%)	\$0.00
Excessive Contamination (over 10%)	T&D cost (currently \$55.00/ton)

3. CHARGES

- (a) The initial Processing Fee is \$109.67 per delivered ton and will remain in effect through July 30, 2023.
- (b) The Processing Fee will become \$145.00 per delivered ton on July 31, 2023. In addition to the Processing Fee, there will be a separate Transportation Fee charged by the Company, which will be the actual amount of third-party transportation costs incurred by Company in connection with the transport of the Customer's material from WM Davie Transfer Station to WM Reuter MRF in Pembroke Pines, Florida. The initial Transportation Fee will be \$9.68/ton and any subsequent price increases imposed by the third-party transporter will be charged to the Customer. [City shall receive the benefit of any rates negotiated within Broward County for the same scope of service if lower than what is proposed herein.](#)
- (c) Company has the right to increase the Processing Fee by four percent (4.0%) each year of the Agreement on October 1st. With the first annual increase occurring on October 1st, 2024

Ft. Lauderdale Blended Value
or Average Material Value (AMV) Sample
Calculation

At the commencement of the Agreement, The Composition (Material %) will be based on updated audit data gathered between 1/1/23 and 6/30/23 and implemented 7/1/23 under the prior Agreement. The Composition (Material %) will be re-analyzed (based upon audits for the previous six-month period) on 1/1/24 and 7/1/24 and each subsequent January 1st and July 1st for the term of the agreement. Market Index values will be updated on 8/1/23 and the 1st day of each month based on current market conditions for the term of the agreement.

a. The initial AMV calculation shall be based up on compositions gathered from material audits between July 1st 2022 and February 1st 2023. An example is presented in Exhibit E. For users of this Agreement other than the City by piggyback or otherwise, a mutually agreeable AMV schedule will be Implemented for the first six months of this Agreement.

A calendar of planned audits will be provided to the City by WMIF indicating the schedule of planned samples. Sampling protocol shall consider the collection day of the week and geographic routing to provide the overall composition. The City may request to have a representative observe any audits by providing a written request not less than seven days prior to the audit. At any time during the term of the Contract the City may submit a written request to conduct a Composition Study with the aid of a qualified professional.

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conduct the Composition Study. The Professional will employ a Composition Study methodology generally recognized and accepted within the Industry as producing accurate results under circumstances similar to those existing at the Designated Facilities. The City will have sole and absolute discretion in choosing the Professional and the methodology to be used in conducting each Composition Study. All costs related to the Composition Study shall be the City's obligation.

- c. Upon engaging a Professional who will conduct a Composition Study, the City will notify WMIF as to the schedule when the study will be conducted. Both the City and WMIF shall have the right to be present and to observe the conduct and performance of the Composition Study.
- d. The City will deliver, or require the Professional to deliver, a copy of the final Composition Study to WMIF. Should the Composition study conducted by the Professional deviate significantly (defined as greater than 5%) from data derived from audits conducted by WMIF, an average of the two AMV totals will be used to calculate the subsequent period until the next semi-annual calculation is due.

After the City and WMIF have received the final Composition Study, then any required resulting adjustments to the material percentages utilized to calculate the AMV as provided in Exhibit E will become effective commencing the first day of the calendar month after the month in which the parties receive the final Composition Study and will remain in effect during the remainder of the Contract unless and until further adjusted in a future Composition Study or City Composition Study.